R21. Administrative Services, Debt Collection.
R21-1. Transfer of Collection Responsibility of State Agencies.
R21-1-1. Purpose.

The purpose of this rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4,Utah Code, and by the Legislature in applicable laws.

R21-1-2. Authority.

This rule is established pursuant to Subsections 63A-3-502(3)(m), 63A-3-502(7)(f), 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4, Utah Code and the Office intent language and fees authorized by the Legislature in applicable laws. Subsection 63A-3-502(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-3-502(7)(f) authorizes the Office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-3-502(7)(a) authorizes the Office to require state agencies to transfer collection responsibility to the Office or its designee according to time limits specified by the Office. Subsection 63A-3-502(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee and an interest charge by following the procedures and requirements of Section 63J-1-504. Subsection 63A-3-502(6)(b) prohibits the Office from assessing the interest charge established by the Office under Subsection 63A-3-502(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and provides legislative intent language allowing the costs of collection to be collected from the debtor.

R21-1-3. Definitions.

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

(1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.

(2) "Designee" means a Private Sector Collector or State Agency that the Office of State Debt Collection has contracted with to provide accounts receivable collection services.

(3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

(4) "Skipped" means that the entity formerly transacting business with the state is not known at the address or telephone number previously used nor is any new address or telephone number known of the entity.

(5) "Event" is the day the goods are purchased, services completed, fines, fees, and assessments are due, etc.

(6) "Trust" means a receivable that is owed to a victim of a crime.

R21-1-4. Agency Billing and Collection Responsibility.

Pursuant to Subsection 63A-3-502(3)(b), (d), and (f) as provided by Subsection 63G-3-201, state agencies shall document and track agency receivables on the state's Advanced Receivable Subsystem unless the state agency has received an exemption from the Office of State Debt Collection. If a state agency receives such an exemption, the state agency shall track their receivables on the agency system and provide the Office with quarterly receivable reports pursuant to 63A-3-502(7)(g). The receivable reports are due to Office no later than 45 days after the end of the quarter.

State agency customers shall be billed within 10 days from the event creating the receivable or the next billing cycle, if reoccurring. The payment demand date shall be no later than 30 days from the event date unless the state agency can demonstrate the 30 day demand date is not appropriate for the agency's business processes. State agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date.

The Office has published guidelines for billing receivables and collecting delinquent accounts. These guidelines are included in the document entitled "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable". This document is available at the Office of State Debt Collection, Room 4130 State Office Building, Salt Lake City, Utah, during regular working hours, for review.

R21-1-5. Transfer of Collection Responsibility.

Each state agency with delinquent accounts shall comply with the provisions of Section 63A-3-502, et seq. unless prohibited by current state or federal statute or regulation. A state agency or user of the Office of State Debt Collection services shall transfer collection responsibility to the Office, or its designee, when the account receivable is not paid within 90 days of the event or is delinquent 61 days. A state agency can negotiate a different receivable transfer date with the Office by demonstrating how the state benefits from the negotiated transfer date. Office recommendations related to the transfer of collection responsibility can be found in the Office publication "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable".

R21-1-6. Format for Transfer of Accounts Receivable Data.

State agencies shall transfer delinquent accounts to the Office or its designee electronically through the state's Advanced Receivable Subsystem. State agencies exempted from using the state's Advanced Receivable Subsystem shall work with the Office to generate an electronic placement file for placing accounts.

R21-1-7. Costs of Collection.

Pursuant to Subsections 63A-3-502(4) (g), Section 15-1-4, Utah Code, and by the legislature in applicable laws, the Office shall charge penalty, interest, and administrative costs of collection and shall collect these costs in addition to the receivable balance from the debtor. The fee calculation and payment priority shall be applied according to the following methodology.

(a) Pursuant to 63A-3-502(4)(g)(i), the costs of collection shall be charged on all accounts referred for collection and the cost shall be calculated based on the dollars collected times the rate authorized by the legislature. The cost of collection shall be paid first from each payment.

(b) The Penalty shall be calculated as a percent of the receivable balance referred for collection. A percent of each payment shall be applied to the outstanding penalty until the penalty is paid in full. The penalty payment shall be calculated based on the authorized penalty percent set annually by the legislature, times the received payment amount. The calculated penalty amount shall be paid after the costs of collection are determined and paid.

(c) Two types of interest shall be charged on accounts referred to the Office. Postjudgment interest as established by

Section 15-1-4, Utah Code, applies to receivables with judgments established by the courts with a sentencing date subsequent to May 5, 1999. Postjudgment interest accrues on the unpaid judgment balance of the receivable. Postjudgment interest that accrues on a trust or the trust portion of a receivable, shall be paid subsequent to the state's outstanding receivable. All other state receivables referred to the Office are charged an interest charge pursuant to 63A-3-502 (4) (g)(iii)(B), Utah Code. This interest is referred to as OSDC interest. OSDC accrued interest shall be paid from each payment after the payment of the costs of collection and the penalty except on trust receivables or receivables including a trust account.

(d) Each payment received on trust receivables shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust receivable balance, and 4th - the accrued postjudgment interest.

(e) Each payment received on receivables that include trust(s) and state receivable balances shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust(s) receivable balance until paid in full, 4th - accrued post-judgment or OSDC interest on the state receivable balance, 5th - the state receivable balance, and 6th - the accrued trust post-judgment interest.

(f) Each payment received on receivables owed only to the state shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd penalty payment, 3rd - accrued post-judgment or OSDC interest, and 4th - the receivable balance.

(g) Trust Payments sent to victims of crimes that are returned to the Office because of bad addresses, shall be reversed from the trust account and applied to amounts owed the state on the account. After the state debt is liquidated, payments shall be applied to the trust and if the victim still cannot be located, the payments shall be retained by the division of Finance for the appropriate time and then sent to Unclaimed Property and thereafter to Crime Victims Reparation.

R21-1-8. Write Off of Accounts Receivable.

State agencies shall follow the statewide Accounting Policies and Procedures outlined in FIACCT 06-01.14 and 06-02.04, available from the state Division of Finance.

R21-1-9. Original Signature Required on Certain Office of State Debt Collection (OSDC) Documents.

An Original Signature is Required by the Office of State Debt Collection (OSDC) on the following documents:

(1) Victim Settlement Agreement

(2) OSDC Debt Repayment Contract Agreement

(3) Wage Assignments to pay debts

(4) Authority for the automatic transfer of funds (EFT) to pay debts

(5) Authority for the automatic Credit/Debit Card charge to pay debts

KEY: accounts receivable, collection transfer

September 7, 2012 **63A-3-502(3)(m)**

Notice of Continuation June 7, 2017 **63A-3-502(4)(g)**

63A-3-502(6)(a)

63A-3-502(6)(b)

63A-3-502(7)(f)

15-1-4

R25. Administrative Services, Finance.
R25-5. Payment of Meeting Compensation (Per Diem) to Boards.
R25-5-1. Purpose.

The purpose of this rule is to establish the procedures for payment of meeting compensation (per diem) and travel expenses to defray the costs for attendance at an official meeting of a board by an officer or employee who is a member.

R25-5-2. Authority.

This rule is established pursuant to Section 63A-3-106, which authorizes the Director of Finance to make rules establishing per diem rates.

R25-5-3. Definitions.

All terms are as defined in Section 63A-3-106(1), except as follows:

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

(2) "Per diem" means the taxable compensation paid for attendance at an official meeting of a board by an officer or employee who is a member.

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

(4) "Independent Corporation Board" means the board of directors of any independent corporation subject to Section 63E Chapter 2 that is subject to this rule by its authorizing statute.

R25-5-4. Rates.

(1) Each member of a board within state government shall receive taxable meeting compensation (per diem) not to exceed $60 for each official meeting attended that lasts up to four hours and taxable meeting compensation (per diem) not to exceed $90 per diem for each official meeting that is longer than four hours.

(a) These rates are applicable to an officer or employee of the executive branch, except as provided under subsection (1)(b);

(b) These rates are applicable to an officer or employee of higher education unless higher education pays the costs of the meeting compensation (per diem).

(2) Travel expenses shall also be paid to board members in accordance with Rule R25-7.

(3) Members may decline to receive meeting compensation (per diem) and/or travel expenses for their services.

(4) Upon approval by Finance, members of an independent corporation board may receive meeting compensation (per diem), at rates exceeding those established in Subsection R25-5-4(1), for each meeting attended as part of their official duties and for reasonable preparation associated with meetings of the full board or the board's subcommittees.

R25-5-5. Governmental Employees.

(1) A member of a board may not receive the taxable meeting compensation (per diem) in R25-5-4(1) or travel expenses if the member is being compensated as an officer or employee of a governmental entity, including the State, while performing the member's service on the board.

Governmental employee board members attending official meetings held at a time other than their normal working hours, who receive no compensation or leave (such as comp time) for the additional hours of the meetings may receive the taxable meeting compensation (per diem) in R25-5-4(1).

(2) Travel expenses related to the attendance of official board meetings for which a governmental employee serving on the board is not otherwise reimbursed may also be paid to the employee in accordance with Rule R25-7.

(3) Governmental employees may decline to receive meeting compensation (per diem) and/or travel expenses for their services.

R25-5-6. Payment of Meeting Compensation (Per Diem).

All board members are required to be paid their meeting compensation (per diem) through the payroll system in order to calculate and withhold the appropriate taxes.

KEY: per diem allowances, rates, state employees, boards
June 21, 2013 63A-3-106
Notice of Continuation April 15, 2013

R33. Administrative Services, Purchasing and General Services.

R33-1. Utah Procurement Rules, General Procurement Provisions.

R33-1-1. Definitions.

(A) Terms used in the procurement rules are defined in Sections 63G-6a-103 and 104.

(B) In addition:

(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) "Adequate Price" Competition means:

(a) when a minimum of two competitive bids, proposals, or quotes are received from responsible vendors that have submitted responsive solicitation responses.

(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) "Bias" means:

(a) a predisposition or a preconceived opinion that prevents an individual from impartially performing any duty or responsibility set forth in Utah Code 63G-6a or other applicable law or rule; or

(b) a prejudice in favor of or against a thing, individual, or group that results in an action or treatment that a reasonable person would consider to be unfair or have the appearance of being unfair.

(5) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(6) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

(7) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

(8) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(9) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

(10) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

(11) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(12) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(13) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

(14) "Evaluation Criteria" means the objective or subjective criteria that will be used to evaluate a vendor's response to a solicitation.

(15) "Include, Includes, or Including" has the same meaning as Section 68-3-12(1)(f). When used in code or rule, "include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

(16) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

(17) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the procurement unit.

(18) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(19)(a) "Objective Criteria" means the quantifiable requirements, standards, and specifications set forth in a solicitation by which solicitation responses from vendors will be evaluated and scored by evaluators based on the measurable and verifiable facts, evidence, and documentation provided in each vendor's solicitation response.

(b) Objective criteria is not evaluated and scored based on the personal judgement, interpretation, or opinion of evaluators. Objective criteria is evaluated and scored strictly on the observable, verifiable, and measurable facts, evidence, and documentation provided in each vendor's solicitation response.

(c) Examples of objective criteria that may be included in a solicitation:

(i) Vendors must document that they have a minimum of five years of experience on similar projects;

(ii) Vendors must have three licensed technicians on the project; and

(iii) Vendors must certify that they have an "A" rating from an accredited rating agency.

(20) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(21) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(22) "Person" means:

(a) an individual;

(b) an association;

(c) an institution;

(d) a corporation;

(e) a company;

(f) a trust;

(g) a limited liability company;

(h) a partnership;

(i) a political subdivision;

(j) a government office, department, division, bureau, or other body of government; and

(k) any other organization or entity.

(23) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(24) "Price Data" means factual information concerning prices for procurement items.

(25) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.

(26) "Section and Subsection" refers to, as applicable, the Utah Code and the Administrative Rule.

(27) "Service" means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a:

(a) Professional service;
(b) Management and operation service;
(c) Consulting service;
(d) Advertising or promotional service;
(e) Concession service;
(f) Vending service;
(g) Management and operation service;
(h) Promotional service;
(i) Banking service;
(j) Credit card service;
(k) Electronic benefit transfer (EBT) card service; or
(l) Women, infants, and children (WIC) card service.

(28)(a) "Subjective Criteria" means the open-ended requirements, standards, and specifications set forth in a solicitation by which solicitation responses from vendors will be evaluated and scored by evaluators based on the personal judgement, interpretations, and opinions of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.

(b) Subjective criteria is not evaluated and scored strictly on the observable, verifiable, and measurable facts, evidence and documentation provided in each vendor's solicitation response. Subjective criteria is also evaluated and scored based on the personal judgement, interpretation, and opinion of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.

(c) Examples of subjective criteria that may be included in a solicitation:

(i) Vendors must describe how they will manage the project to meet the deadline;

(ii) Vendors must demonstrate that they have the knowledge, skills, and ability to accomplish the scope of work; and

(iii) Vendors must explain how their product complies with the specifications.

(29) "Surety bond" (performance bond) means a promise to pay one the oblige (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the oblige (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the oblige (owner), will recover its losses via the bond.

(30) "Steering a Contract to a Favored Vendor" is defined as a person involved in the procurement process, including any phase of the procurement process, who inappropriately acts with bias or prejudice in violation of the law to favor one vendor over another vendor(s) in awarding a government contract.

(a) Steering a contract to a favored vendor includes:

(i) Taking part in collusion or manipulation of the procurement process;

(ii) Accepting any form of illegal gratuity, bribe or kickback paid by a vendor in exchange for a contract award;

(iii) Awarding a contract without engaging in a standard procurement process to a vendor without proper justification;

(iv) Involvement in a bid rigging scheme;

(v) Writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or in a way that gives an unfair advantage to a particular vendor without proper justification;

(vi) Intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Section 63G-6a-506(8);

(vii) Leaking bid, proposal, or other information to a particular vendor that is prejudicial to other vendors;

(viii) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension; or

(ix) Participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.

(31) "Technology" means any type of technology defined in Section 63F-1-102(8).

R33-1-2. Applicability of Rules.

(1) Title R33 shall apply to:

(a) A procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103 as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Section 63G-6a-103(3); and

(b) A procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103 as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or a portion of Title R33 by rule, ordinance, policy, or other authorized means.

R33-1-2.5. Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent.

When making a determination and a specific law or rule pertaining to the issue does not exist, the chief procurement officer or head of a procurement unit with independent procurement authority may refer to other applicable laws that are similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard set forth in R33-1-1.

R33-1-3. Determinations by Chief Procurement Officer or Head of a Procurement Unit with Independent Procurement Authority.

(1) Unless specifically stated otherwise, all determinations under Utah Procurement Code and Title R33 shall be made by the chief procurement officer or head of a procurement unit with independent procurement authority.

(2) Determinations by the chief procurement officer or head of a procurement unit with independent procurement authority shall be made:

(a) In accordance with the provisions set forth in Sections 63G-6a-106 and 303 and other rules and laws if applicable; or

(b) By applying the reasonable person standard to determine:

(i) If the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of the Utah Procurement Code or Title R33;

(ii) If the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of the Utah Procurement Code or Title R33 has occurred; or

(iii) If the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

R33-1-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.

(1) Unless the chief procurement officer or head of a procurement unit with independent procurement authority issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable Rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process whenever:

(a) Public funds are expended or used to acquire a procurement item; or

(b) A procurement unit's property, name, influence, assets, resources, programs, or other things of value is used as consideration in the formation of a contract for a procurement item.

R33-1-12. Mandatory Minimum Requirements in a Solicitation.

(1) Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified persons responding to a solicitation and to limit the number of persons eligible to move forward to subsequent stages in the solicitation or evaluation process. Examples of mandatory minimum requirements include:

(a) Ability to meet delivery deadlines;

(b) Qualifications;

(c) Certifications;

(d) Licensing;

(e) Experience;

(f) Compliance with State or Federal regulations;

(g) Type of services provided; or

(i) Availability of product, equipment, supplies, or services.

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.
R33-4. Supplemental Procurement Procedures.
R33-4-101. Request for Statement of Qualifications.
Reserved.

R33-4-101a. Rejection of a Late Solicitation Response -- Delivery and Time Requirements.
(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a response to a request for statement of qualifications after the deadline for receipt of responses to a request for statement of qualifications has passed.
(2) When submitting a response to a request for statement of qualifications electronically, vendors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a vendor is in the middle of uploading a response when the closing time arrives, the procurement unit will stop the process and the response will not be accepted.
(3) When submitting a response to a request for statement of qualification by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) vendors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a response being late.
(a) All responses received by physical delivery will be date and time stamped by the procurement unit.
(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a response not being received by the established due date and time, the response shall be accepted as being on time.

R33-4-101b. Vendors with Exclusive Authorization to Bid.
(1) The requirements of this rule shall only apply when a procurement unit issues a request for statements of qualification under Utah Code 63G-6a-410 to responsible vendors with an exclusive dealership, franchise, distributorship, or other arrangement, from a manufacturer identifying the vendor as the only one authorized to submit bids or quotes for the specified procurement item within the State of Utah or a region within the State of Utah.
(a) Under the provisions of this rule, no vendor described in (1) may be excluded from the list of prequalified vendors, unless a determination is made by the procurement unit that a vendor is not qualified, responsive or responsible.
(b) The request for statements of qualifications shall indicate that all vendors on the prequalified vendor list will be invited to submit bids or quotes.
(2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:
(a) cost;
(b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;
(c) training, knowledge and experience of employees of the procurement unit and of the vendors;
(d) past performance of vendors and pertaining to the procurement item being purchased;
(e) the costs associated with transitioning from an existing procurement item to a new procurement item; or
(f) other factors determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.
(3) Procurement units must follow the requirements in R33-4-110 when obtaining quotes and the requirements in Part 6 of the Utah Procurement Code when obtaining bids.
(4) An exception to the requirements of this rule may be authorized by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-4-103. Specifications.
(1) Public entities shall include in solicitation documents specifications for the procurement item(s).
(2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.
(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.
(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.
(a) Subsection R33-4-104(3) does not apply to the following:
(i) a design build construction project; and
(ii) other procurements determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
(b) Violations of this Subsection R33-4-104(3) may result in:
(i) the bidder or offeror being declared ineligible for award of the contract;
(ii) the solicitation being canceled;
(iii) termination of an awarded contract; or
(iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
(4) Brand Name or Equal Specifications.
(a) Brand name or equal specifications may be used when:
(i) "or equivalent" reference is included in the specification; and,
(ii) as many other brand names as practicable are also included in the specification.
(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.
(5) Brand Name Requirements.
(a) If only one brand can meet the requirements set forth in the specifications, the procurement unit shall solicit from as many providers of the brand as practicable; and
(b) If there is only one provider that can meet the requirements set forth in the specifications, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802 and Section R33-8-101b.

R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.
(1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following

circumstances:

(a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-112 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;

(b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or

(c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.

(i) Reasonable effort shall mean:

(A) Public notice under Utah Code 63G-6a-112;

(B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;

(C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or

(D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.

(2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:

(a) whether pricing is fair and reasonable as set forth in R33-6-109(1);

(b) canceling the procurement as set forth in R33-9-103; and

(c) bid security requirement as set forth in R33-11-202.

(3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

R33-4-110. Use of Electronic, Telephone, or Written Quotes.

(1) Quote means an informal purchasing process which solicits pricing information from several sources.

(2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and

(a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) The procurement unit maintains a public record that includes:

(i) The name of each vendor supplying a quotation; and

(ii) The amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) May obtain electronic, telephone, or written quotations for a procurement item costing less than $5,000;

(b) Shall send a request to obtain quotations for a procurement item costing more than $5,000 to the division of state purchasing;

(i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than $5,000; and

(c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

KEY: government purchasing, general procurement provisions, specifications, small purchases
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.

R33-5. Other Standard Procurement Processes.

R33-5-101. Request for Information.

In addition to the requirements of Part 5 of the Utah Procurement Code, a Request for Information should indicate the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

R33-5-104. Small Purchases.

(1) Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2)(a) Unless otherwise required as part of another standard procurement process being used pursuant to the small purchase rule, small purchases conducted under this rule do not require a solicitation or public notice.

(b) As set forth in the definition of "solicitation" in Utah Code 63G-6a-103, the small purchase standard procurement process does not require a solicitation to be conducted;

(i) 63G-6a-103 "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

(3) Small Purchase thresholds:

(a) The "Individual Procurement" threshold is a maximum amount of $1,000 for a procurement item;

(i) For individual procurement item(s) costing up to $1,000, a procurement unit may select the best source by direct award and without seeking competitive bids or quotes.

(b) The single procurement aggregate threshold is a maximum amount of $5,000 for multiple procurement item(s) purchased from one source at one time; and

(c) The annual cumulative threshold from the same source is a maximum amount of $50,000.

(4) Whenever practicable, the Division of Purchasing and General Services and procurement units shall use a rotation system or other system designed to allow for competition when using the small purchases process.

R33-5-105. Small Purchases Threshold for Design Professional Services.

(1) The small purchase threshold for design professional services is a maximum amount of $100,000.

(2) Design professional services may be procured up to a maximum of $100,000, by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.

(3)(a) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall when using this rule in conjunction with an approved vendor list, select a minimum of three design professional firms from the approved vendor list using one or more of the following methods:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) After selecting a minimum of three firms from the approved vendor list using one of the methods specified in Subsection (3)(a), the procurement unit shall rank the firms in order and begin fee negotiations, up to $100,000, with the highest ranked firm. If an agreement cannot be reached with the highest ranked firm, the procurement unit shall move to the next highest ranked firm and so on until a fee agreement is reached;

(c) If a fee agreement cannot be reached with the first group of firms selected, the procurement unit may select additional firms from the approved vendor list using the same process set forth in subsection (3)(a) and (b) or the procurement unit may cancel the procurement;

(d) Each procurement unit using an approved vendor list under this rule shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract;

(4) A procurement unit shall include minimum specifications when using the small purchase threshold for design professional services.

(5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the evaluation and fee negotiation process described in Part 15 of the Utah Procurement Code in the procurement of design professional services.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-106. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold per individual project is a maximum of $100,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) A procurement unit shall include minimum specifications when using the small purchases threshold for construction projects.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.

(4) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure individual small construction projects up to a maximum of $25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that it is capable of meeting the minimum specifications of the project.

(5) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure individual small construction projects costing more than $25,000 up to a maximum of $100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(8) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-106.5. Small Purchases Threshold for Construction Projects Using An Approved Vendor List.

(1) The small construction project threshold per individual project using an approved vendor list is a maximum of $2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall:

(a) For individual construction projects up to a maximum of $25,000 contract with a vendor/contractor by direct award using one of the following methods to select the vendor/contractor:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) For individual construction projects over $25,000 up to a maximum of $100,000 by obtaining a minimum of two competitive quotes from vendors/contractors on the approved vendor list;

(i) Procurement units shall use one of the following methods to select vendors from whom quotes are obtained:

(A) A rotation system, organized alphabetically, numerically, or randomly;

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(ii) When using one of the methods listed in Subsection (2)(b) to select vendors to provide quotes, a procurement unit may also obtain an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the procurement unit using the approved vendor list;

(iii) When quotes or bids are obtained under subsection (2)(b), procurement units shall purchase the procurement item from the vendor/contractor on the approved vendor list that provides the lowest quote for the procurement item; or

(c) For individual construction projects over $100,000 up to a maximum of $2.5 million, by inviting all vendors/contractors on the approved vendor list to submit bids in accordance with the provisions set forth in Utah Code 63G-6a, Part 6, except public notice requirements in Part 6 are waived.

R33-5-107. Quotes for Small Purchases from $1,001 to $50,000.

(1) For procurement item(s) where the cost is greater than $1,000 but up to a maximum of $5,000, a procurement unit shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than $5,000 up to a maximum of $50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over $50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing more than $5,000 up to a maximum of $50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

(5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

(7)(a) Approved Vendor List: In order to ensure the fair and quitable treatment of all vendors on an approved vendor list, a procurement unit shall, when using this rule in conjunction with an approved vendor list, obtain a minimum of two quotes from vendors on the approved vendor list using one or more of the following methods to select vendors from whom to obtain quotes:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field;or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) Each procurement unit using an approved vendor list under this rule shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract;

(c) When using one of the methods listed in Subsection (7)(a) to select vendors to provide quotes, a procurement unit may also obtain an additional quote from the vendor that provided the lowest quote on the most recently completed

procurement conducted by the procurement unit using the approved vendor list;

(d) Whenever practicable, procurement units may obtain quotes from all vendors on an approved vendor list; and

(e) Procurement units shall purchase the procurement item from the vendor on the approved vendor list that provides the lowest quote for the procurement item.

R33-5-108. Small Purchases of Professional Service Providers and Consultants.

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of $100,000.

(2) Professional service providers and consultants may be procured up to a maximum of $100,000, by direct negotiation after reviewing the qualifications of a minimum of three firms or individuals.

(3)(a) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall, when using this rule in conjunction with an approved vendor list, select a minimum of three professional service providers or consultants from the approved vendor list using one or more of the following methods:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field;

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) After selecting a minimum of three firms or individuals from the approved vendor list using one of the methods specified in Subsection (3)(a), the procurement unit shall rank the firms or individuals in order and award a contract via direct award up to $100,000 to the highest ranked firm or individual.

(4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing at the beginning of the quote or solicitation process, in the procurement of professional services or consulting services.

(5) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;

(f) R33-4-103(3) -- Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications; and

(g) All other applicable laws and rules.

R33-5-202. Contract Award Based on Established Terms.

(1) In accordance with Section 63G-6a-113 and 507(6)(b), a procurement unit may award a contract to a vendor on an approved vendor list at an established price based on:

(a) A price list, rate schedule, or pricing catalog:

(i) Submitted by a vendor and accepted by the procurement unit; or

(ii) Mandated by the procurement unit or a federal agency; or

(b) A federal regulation for a health and human services program.

(2) Established terms submitted by vendors on an approved vendor list:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog submitted by the vendor, the procurement unit shall, as applicable:

(i) Assign work or purchase from the approved vendor with the lowest price, rate or catalog price;

(A) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-6-111 to resolve tie; and

(B) If the lowest-cost approved vendor cannot provide the procurement item or quantity needed, then work shall be assigned or the purchase made from the next lowest-cost vendor, and so on, until the procurement unit's needs are met;

(ii) Establish a cost threshold based on cost analysis as set forth in Section R33-12-603 and 604, and assign work or purchase from an approved vendor meeting the cost threshold using one of the following methods:

(A) A rotation system, organized alphabetically, numerically, or randomly;

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority; and

(iii) In accordance with Section 63G-6a-1206.5, an approved vendor may lower its price, rate, or catalog price at any time during the time a contract is in effect in order to be assigned work or receive purchases under Subsections (i) and (ii).

(3) Established terms mandated by procurement unit or federal agency:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog mandated by the procurement unit or a federal agency, the procurement unit shall use one of the following methods to assign work or purchase from a vendor on an approved vendor list:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog based on a federal regulation for a health and human services program the procurement unit shall follow the requirements set forth in the applicable federal regulation to assign work or make a purchase.

(5) In accordance with the provisions set forth in Section 63G-6a-2105, the chief procurement officer may award a contract(s) to vendors on an approved vendor list on a statewide, regional, or combined statewide and regional basis.

R33-5-203. Performance Rating System for Vendors on an Approved Vendor List.

(1) A procurement unit may develop a performance rating system to evaluate the performance of vendors on an approved vendor list, provided the performance rating system is described in the Request for Statement of Qualifications used to establish the approved vendor list. and includes:

(a) The minimum performance rating threshold that approved vendors must achieve in order to remain on the approved vendor list; and

(b) A statement indicating that vendors whose performance does not meet the minimum performance rating

threshold may be disqualified and removed from the approved vendor list.

(2) A procurement unit that disqualifies and removes a vendor from an approved vendor list shall:

(a) Make a written finding that:

(i) Describes the performance rating system;

(ii) Identifies the minimum performance rating threshold; and

(iii) Explains the performance rating achieved by the disqualified vendor; and

(b) Provide a copy of the written finding to the disqualified vendor.

R33-5-204. Approved Vendor Lists -- Using Small Purchase Process.

(1) When awarding a contract to an approved vendor using the small purchasing process, the procurement unit shall follow the small purchase requirements set forth in Section 63G-6a-506 and the following Administrative Rules as applicable:

(a) Section R33-5-104. Small Purchases

(b) Section R33-5-105. Small Purchases Threshold for Design Professional Services;

(c) Section R33-5-106. Small Purchases Threshold for Construction Projects;

(d) Section R33-5-107. Quotes for Small Purchases from $1,001, to $50,000;

(e) Section R33-5-108. Small Purchases of Professional Service Providers and Consultants;

(2) Executive branch employees are required to use state contracts for all small purchases for procurement items available on state contract.

KEY: government purchasing, procurements, request for information
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.

R33-6. Bidding.

R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

(1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the description of the procurement item(s)being sought, all criteria, requirements, factors, and formulas to be used for determining the lowest responsible bidder and responsive bid.

(3)(a) The award of a contract shall be to the responsible bidder with the lowest responsive bid who meets the objective criteria described in the invitation for bids.

(b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.

(c) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

R33-6-102. Bidder Solicitation Response.

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

(a) the bidder's bid price;

(b) the bidder's acknowledged receipt of addenda issued by the procurement unit;

(c) the bidder to identify other applicable submissions; and

(d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of Section R33-7-105 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

(5) All bids must be based upon a definite calculated price

(a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;

(b) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and

(c) Bids may not be based on using another bidder's price, including a percentage discount, formula, other amount related to another bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

R33-6-103. Pre-Bid Conferences and Site Visits.

(1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.

(c) A pre-bid conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation; or

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorize representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.

(2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-bid conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or

site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-bid conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-6-104. Addenda to Invitation for Bids.

Prior to the deadline for receipt of solicitation responses, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

R33-6-105. Rejection of a Late Bid -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a bid after the deadline for receipt of the solicitation responses to an invitation for bids has passed as set forth in Section 63G-6a-604(4).

(2) When submitting a bid electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the procurement unit will stop the process and the bid will not be accepted.

(3) When submitting a bid by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid being late.

(a) All bids received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a bid not being received by the established due date and time, the bid shall be accepted as being on time.

R33-6-106. Voluntary Withdrawal of a Bid.

A bidder may voluntarily withdraw a bid at any time before a contract is awarded with respect to the invitation for bids for which the bid was submitted provided the bidder is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

R33-6-107. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

R33-6-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-6-109. Only One Bid Received.

(1) If only one responsive bid is received from a responsible bidder in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the chief procurement officer or head of a procurement unit with independent procurement authority determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

(a) a new invitation for bids solicited; or

(b) the procurement canceled.

R33-6-110. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or head of a procurement unit with independent procurement authority will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R33-6-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-6-112. Publication of Award.

(1) The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the

contract is not awarded.

R33-6-113. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Section R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.

R33-7. Request for Proposals.

R33-7-101. Conducting the Request for Proposals Standard Procurement Process.

The request for proposals standard procurement process shall be conducted in accordance with the requirements set forth in, Utah Procurement Code 63G-6a, Part 7. The request for proposal process may be used by a procurement unit to select the proposal that provides the best value or is the most advantageous to the procurement unit. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-7-102. Content of the Request for Proposals.

(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:

(a) a description of the format that offerors are to use when submitting a proposal including any required forms; and

(b) instructions for submitting price.

(2) The conducting procurement unit is responsible for all content contained in the request for proposals solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and

(f) for executive branch procurement units the requirements of Section 63G-6a-110(6).

R33-7-103. Multiple Stage RFP Process.

(1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:

(a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and

(b) the methodology used to determine which proposals shall be disqualified from additional stages.

R33-7-103a. Multiple Stage Cost Qualification RFP Process.

In accordance with Section 63G-6a-710, a procurement unit may use a multiple stage RFP process to assist the procurement unit in selecting the proposal that provides the best value or is the most advantageous to the procurement unit. This Rule sets forth the process for issuing a multiple stage RFP process where cost is evaluated prior to the technical requirements. The concept behind this "multiple stage cost qualification RFP process" is that for certain types of procurements, a procurement unit may not want to spend time evaluating the technical responses of proposals with cost estimates that exceed the stated budget or significantly exceed the lowest cost proposal. Statute does not restrict the number of stages that may occur in a multiple stage RFP, the number or type of criteria that may be used to evaluate proposals or the sequencing of when evaluation criteria must be evaluated. However, statute does place restrictions on procedures such as separating cost, when the evaluation committee can and cannot change scores, issuing a justification statement and, if applicable, conducting a cost-benefit analysis, and so on. The instructions contained in this multiple stage cost qualification RFP process comply with all provisions set forth in Utah Code Title 63G-6a, Part 7 and associated Rule R33-7.

(1) Definitions:

(a) "Multiple stage cost qualification RFP process" means a multiple stage RFP process in which cost proposals are evaluated prior to the evaluation of technical criteria and are used to reject offerors based on established cost criteria.

(b) "Maximum cost differential percentage threshold" is a cost ceiling that is established by the conducting procurement unit that an offeror's cost proposal must not exceed or the offeror's proposal will be rejected and the offeror will not be allowed to proceed to a subsequent stage. The maximum cost differential percentage threshold may be based on the following:

(i) The lowest cost proposal submitted;

(ii) The conducting procurement's stated budget; or

(iii) A combination of (i) and (ii).

(2) The chief procurement officer or head of procurement unit with independent procurement authority may issue a multiple stage RFP where cost is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages in accordance with the requirements set forth in Utah Code 63G-6a, Part 7 and Rule R33-7.

(3) When using the multiple stage cost qualification RFP process the conducting procurement unit shall establish and include in the RFP:

(a) The minimum mandatory pass or fail requirements that proposals must meet in stage one in order to move on to stage two;

(b) The maximum cost differential percentage threshold that proposals must not exceed in stage two in order to move on to stage three;

(c) The technical criteria and a score threshold that proposals must meet in stage three in order to be eligible to move on to stage four; and

(d) If applicable, the total combined score threshold in stage four that proposals must meet to determine best value and be eligible for contract award.

(4) Except as provided in Section 63G-6a-707, the following process shall be used to evaluate proposals and award a contract under this multiple stage process:

(a) During stage one, an individual assigned by the conducting procurement unit shall evaluate each offeror's proposal in response to the minimum mandatory pass or fail requirements set forth in the RFP:

(i) Offerors with proposals that do not meet the mandatory minimum pass or fail requirements shall be rejected and are not allowed to move on to subsequent stages and are not eligible to receive a contract award;

(ii) Offerors with proposals that meet the mandatory minimum pass or fail requirements shall be deemed qualified to move on to stage two;

(b) During stage two, the issuing procurement unit shall assign an individual, who is not a member of the evaluation committee, to evaluate the cost proposals of offerors qualified in stage one in response to the cost criteria and maximum cost differential percentage threshold set forth in the RFP.

(i) The individual assigned by the issuing procurement unit to evaluate cost proposals shall do so outside the presence of the evaluation committee and shall not share the cost proposals or the results of the cost proposal evaluations with the evaluation committee until all technical scoring is completed in stage three;

(ii) Offerors with cost proposals that exceed the maximum cost differential percentage threshold shall be rejected, not allowed to move on to subsequent stages, and not eligible to receive a contract award;

(iii) Offerors with cost proposals that do not exceed the maximum cost differential percentage threshold shall be deemed qualified to move on to stage three;

(iv) Cost shall be evaluated in accordance with Section

63G-6a-707; and

(v) A cost score shall be calculated based on the cost formula set forth in the RFP for each proposal identified in Subsection (3)(b)(iii) of this Rule;

(c) During stage three, the evaluation committee shall score the proposal of each offeror qualified in stage two, in response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with Section R33-7-704 or rules established by the applicable rulemaking authority;

(d) During stage four, the individual assigned by the issuing procurement unit, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth in Section 63G-6a-707;

(e) In order to determine best value to the procurement unit, the evaluation committee shall prepare a justification statement and, if applicable, a cost-benefit analysis, in accordance with Section 63G-6a-708 and 709; and

(f) A contract may be awarded to the offeror with the proposal having the highest total combined score, or multiple contracts may be awarded to offerors with proposals meeting the total combined score threshold set forth in the RFP, in accordance with Section 63G-6a-709.

(5) Maximum cost differential percentage thresholds include the following examples:

(a) Lowest Cost Proposal Example: The maximum cost differential percentage threshold is within 10% above the lowest cost proposal:

(i) Offerors with cost proposals that exceed 10% above the proposal with the lowest cost will be rejected. Offerors with cost proposals that do not exceed 10% above the proposal with the lowest cost will move on to the subsequent stage;

(b) Stated Budget Example: The maximum cost differential percentage threshold is within 5% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 5% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 5% above the stated budget will move on to the subsequent stage; and

(a) Combination Lowest Cost Proposal and Stated Budget Example: the maximum cost differential percentage threshold is within 8% above the lowest cost proposal and within 2% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 8% above the proposal with the lowest cost will be rejected and offerors with cost proposals that exceed 2% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 8% above the proposal with the lowest cost and do not exceed 2% above the stated budget will move on to the subsequent stage.

(6) Additional multiple stage RFP processes may be developed and used to cover the wide range of different procurements that public entities encounter, provided the processes comply with the requirements set forth in the Utah Procurement Code and Title R33.

R33-7-104. Exceptions to Terms and Conditions Published in the RFP.

(1) Offerors requesting exceptions and/or additions to the Standard Terms and Conditions published in the RFP must include the exceptions and/or additions with the proposal response.

(2) Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the head of the issuing procurement unit that it is not beneficial to the procurement unit to republish the solicitation.

(3) Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL

(4) A procurement unit may refuse to negotiate exceptions and/or additions:

(a) that are determined to be excessive;

(b) that are inconsistent with similar contracts of the procurement unit;

(c) to warranties, insurance, indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;

(d) where the solicitation specifically prohibits exceptions and/or additions; or

(e) that are not in the best interest of the procurement unit.

(5) If negotiations are permitted, a procurement unit may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.

(6) If, in the negotiations of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.

R33-7-105. Protected Records.

(1)(a) The following are protected records and may be redacted by the vendor subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. (a) Trade Secrets, as defined in Section 13-24-2 of the Utah Code.

(b) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2).

(c) Other Protected Records under GRAMA.

(2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:

(a) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and

(b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected.

R33-7-106. Notification.

(1) A person who complies with Section R33-7-105 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Section R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the

selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

R33-7-107. Process for Submitting Proposals with Protected Business Confidential Information.

(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(i) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

R33-7-201. Pre-Proposal Conferences and Site Visits.

(1) Mandatory pre-proposal conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits allowing optional attendance by offerors are not permitted.

(c) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-proposal conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all offerors that do not have an authorize representative in attendance for the entire pre-proposal conference or site visit to review any audio or video recording made.

(2)(a) If a pre-proposal conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-proposal conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-proposal conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-proposal conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-proposal conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-7-301. Addenda to Request for Proposals.

(1) Addenda to the Request for Proposals may be made for the purpose of:

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

(b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

(2) After the due date and time for submitting a response to Request for Proposals, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Request for Proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the Request for Proposals that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority likely would have impacted the number of Offerors responding to the original publication of the Request for Proposals.

R33-7-402. Rejection of Late Proposals -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a proposal after the deadline for receipt of solicitation responses to a request for proposals has passed as set forth in Section 63G-6a-704(2).

(2) When submitting a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing time arrives, the procurement unit will stop the process and the proposal will not be accepted.

(3) When submitting a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal being late.

(a) All proposals received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results

in a proposal not being received by the established due date and time, the proposal shall be accepted as being on time.

R33-7-501. Evaluation of Proposals.

(1) The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

(2) An evaluation committee may ask questions of offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.

(3)(a) The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.

(b) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost should not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

(c) Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

R33-7-501.5. Minimum Score Thresholds.

(1) A procurement unit may establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

(2) If used, minimum score thresholds must be set forth in the RFP and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.

(3)(a) Thresholds may be based on:

(i) Minimum scores for each evaluation category;

(ii) The total of each minimum score in each evaluation category based on the total points available; or

(iii) A combination of (i) and (ii).

(b) Thresholds may not be based on:

(i) A natural break in scores that was not defined and set forth in the RFP; or

(ii) A predetermined number of offerors.

R33-7-502. Voluntary Withdrawal of a Proposal.

An offeror may voluntarily withdraw a proposal at any time before a contract is awarded with respect to the RFP for which the proposal was submitted provided the offeror is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5 of the Utah Procurement Code. Rule R33-7 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

(2) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(3) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

R33-7-701. Cost-benefit Analysis Exception: CM/GC.

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide , at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

R33-7-701.1. Cost-Benefit Analysis.

(1) A cost-benefit analysis conducted under Utah Code 63G-6a-708 shall be based on the entire term of the contract, excluding any renewal periods.

R33-7-702. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and:

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable as set forth in R33-12-603 and R33-12-604; and

(iii) the proposal is in the best interest of the procurement unit.

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the procurement unit, the procurement unit shall issue a justification statement as set forth in 63G-6a-708 and may make an award.

(c) If an award is not made, the procurement unit may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

R33-7-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.

Evaluation committee members, employees of procurement units, and any other person involved in an RFP evaluation process are required to review Utah Code Title 63G-6a, Parts 7 and 24; and Section R33-7-703 prior to participating in the evaluation process.

(1)(a) In accordance with Section 63G-6a-704, the conducting procurement unit may conduct a review of proposals to determine if:

(i) the person submitting the proposal is responsible;

(ii) the proposal is responsive; and

(iii) the proposal meets the mandatory minimum requirements set forth in the RFP.

(b) An evaluation committee may not evaluate proposals deemed non-responsive or not meeting the mandatory minimum requirements of the RFP, or vendors determined to be not responsible.

(2)(a) Prior to the evaluation and scoring of proposals, an employee from the issuing procurement unit will meet with the evaluation committee, staff members of the conducting procurement unit, and any other person involved in the procurement process that may have access to the proposals to:

(i) Explain the evaluation and scoring process;

(ii) Discuss requirements and prohibitions pertaining to:

(A) socialization with vendors as set forth in Section R33-24-104;

(B) financial conflicts of interest as set forth in Section

R33-24-105;

(C) personal relationships, favoritism, or bias as set forth in Section R33-24-106;

(D) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and

(E) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-24-108.

(iii) review the scoring sheet and evaluation criteria set forth in the RFP; and

(iv) provide a copy of Section R33-7-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.

(b) Prior to participating in any phase of the RFP process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest as set forth in Section 63G-6a-707 and Section R33-24-107.

(i) At each stage of the procurement process, the conducting procurement unit is required to ensure that evaluation committee members, employees of the procurement unit and any other person participating in the procurement process:

(A) do not have a conflict of interest with any of the offerors;

(B) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and

(C) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(3) Unless an exception is authorized by the head of the issuing procurement unit, the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee has finalized its scoring of non-price technical criteria for each proposal and submitted those scores to the issuing procurement unit as set forth in Section 63G-6a-707.

(4)(a) In accordance with Section 63G-6a-707, the conducting procurement unit shall appoint an evaluation committee to evaluate each responsive proposal submitted by a responsible offeror that has not been rejected from consideration under the provisions of the Utah Procurement Code, using the criteria described in the RFP.

(b) Using the provisions set forth in Section R33-7-705, the evaluation committee shall exercise independent judgement in the evaluation and scoring of the non-priced technical criteria in each proposal.

(c) Proposals must be evaluated solely on the criteria listed in the RFP. The evaluation committee shall assess each proposal's completeness, accuracy, and capability of meeting the technical criteria listed in the RFP.

(d) The evaluation committee may receive assistance from an expert or consultant authorized by the conducting procurement unit in accordance with the provisions set forth in Section 63G-6a-707(4).

(e) The evaluation committee may enter into discussions, conduct interviews with, or attend presentations by responsible offerors with responsive proposals that meet the mandatory minimum requirements of the RFP for the purpose of clarifying information contained in proposals in accordance with the provisions set forth in Section 63G-6a-707(5).

(5) After each proposal has been independently evaluated by each member of the evaluation committee, each committee member independently shall assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the RFP.

(a) After completing the preliminary draft scoring of the non-priced technical criteria for each proposal, the evaluation committee shall enter into deliberations to:

(i) review each evaluation committee member's preliminary draft scores;

(ii) resolve any factual disagreements;

(iii) modify their preliminary draft scores based on their updated understanding of the facts; and

(iv) derive the committee's final recommended consensus score for the non-priced technical criteria of each proposal.

(b) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that:

(i) a proposal be rejected for;

(A) being non-responsive,

(B) not meeting the mandatory minimum requirements, or

(C) not meeting any applicable minimum score threshold, or

(ii) an offeror be rejected for not being responsible.

(c) If an evaluation committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled.

(d) In order to score proposals fairly, an evaluation committee member must be present at all evaluation committee meetings and must review all proposals, including if applicable oral presentations. If an evaluation committee member fails to attend an evaluation committee meeting or leaves a meeting early or fails for any reason to fulfill the duties and obligations of a committee member, that committee member shall be removed from the committee. The remainder of the evaluation committee members may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(i) Attendance or participation on an evaluation committee via electronic means such as a conference call, a webcam, an online business application, or other electronic means is permissible.

(6)(a) The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria of each proposal using the following methods:

(i) the total of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee; or

(ii) an average of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee.

(b) The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the issuing procurement unit for review.

(7) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the issuing procurement unit, unless the issuing procurement unit authorizes that a best and final offer process to be conducted under the provisions set forth in Section 63G-6a-707.5 and Section R33-7-601.

(8) In accordance with Section 63G-6a-707, the issuing procurement unit shall:

(a) review the evaluation committee's final recommended scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation in accordance with Sections 63G-6a-106(4) or 63G-6a-303(3).

(b) score the cost of each proposal based on the applicable scoring formula; and

(c) calculate the total combined score for each proposal.

(9) The evaluation committee may, with approval from the issuing procurement unit, request best and final offers from responsible offerors who have submitted responsive proposals

that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

(10) The evaluation committee and the conducting procurement unit shall prepare a justification statement and any applicable cost-benefit analysis in accordance with Section 63G-6a-708.

(11) The issuing procurement unit's role as a non-scoring member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah Procurement Code and applicable Rules.

(12)(a) The head of the issuing procurement unit may remove a member of an evaluation committee for:

(i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;

(ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;

(iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;

(iv) having inappropriate contact or communication with a person responding to a solicitation;

(v) socializing inappropriately with a person responding to a solicitation;

(vi) engaging in any other action or having any other association that causes the head of the issuing procurement unit to conclude that the individual cannot fairly evaluate a solicitation response; or

(vii) any other violation of a law, rule, or policy.

(b) The head of the issuing procurement unit may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (12)(a). If an impropriety cannot be cured by replacing a member, the head of the issuing procurement unit may appoint a new evaluation committee, cancel the procurement or cancel and reissue the procurement.

R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals in the RFP Process.

(1) The scoring of evaluation criteria, other than cost, for proposals in the RFP process shall be:

(a) based on a one through five point scoring system;

(b) used to determine which proposals meet mandatory minimum requirements or score thresholds set forth in the RFP for proposals to move on to a subsequent stage in the RFP process; and

(c) used to assist the procurement unit in selecting which proposal provides the best value or is the most advantageous to the procurement unit.

(2) Points shall be awarded to each applicable evaluation criteria as set forth in the RFP, including but not limited to:

(a) Technical specifications;

(b) Qualifications and experience;

(c) Programming;

(d) Design;

(e) Time, manner, or schedule of delivery;

(f) Quality or suitability for a particular purpose;

(g) Financial solvency;

(h) Management and methodological plan;

(i) Performance ratings or references; and

(j) Other requirements specified in the RFP.

(3) Scoring Methodology:

(a) Five points (Excellent): The proposal addresses and exceeds all of the requirements or criteria described in the RFP;

(b) Four points (Good): The proposal addresses all of the requirements or criteria described in the RFP and, in some respects, exceeds them;

(c) Three points (Satisfactory): The proposal addresses all of the requirements or criteria described in the RFP in a satisfactory manner;

(d) Two points (Unsatisfactory): The proposal addresses the requirements or criteria described in the RFP in an unsatisfactory manner; or

(e) One point (Fail): The proposal fails to:

(i) address some or all of the requirements or criteria described in the RFP;

(ii) accurately addresses some or all of the requirements or criteria described in the RFP; or

(iii) Demonstrate that the vendor can perform the scope of work or supply the procurement items.

R33-7-705. Evaluation Committee Members Required to Exercise Independent Judgment.

(1)(a) Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes.

(b) Evaluators must not allow their scoring to be inappropriately influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.

(c) Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the conducting procurement unit or issuing procurement unit. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

(2)(a) The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not lead to coercion or intimidation on the part of one committee member to influence the scoring of another committee member.

(b) Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

(c) Evaluators are required to report any attempts by others to improperly influence their scoring to favor or disfavor a particular offeror.

(d) If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.

R33-7-802. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Section R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section R33-7-105;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Section R33-7-105.

(2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or

agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(b) any individual scorer's/evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

R33-7-900. Public-Private Partnerships.

(1) Except as provided in Section 63G-6a-802, a procurement unit shall award a contract for a public-private partnership, as defined in Section 63G-6a-103, by the request for proposals standard procurement process set forth in Section 63G-6a, Part 7.

KEY: government purchasing, request for proposals, standard procurement process
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.

R33-8. Exceptions to Standard Procurement Process.

R33-8-101. Award of Contract Without Engaging in a Standard Procurement Process.

(1) Under the provisions set forth in Section 63G-6a-802, the chief procurement officer or head of a procurement unit with independent procurement authority may award a contract without engaging in a standard procurement process under the following circumstances:

(a) There is only one source for the procurement item;

(b) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis document that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or

(c) Other circumstances described by the applicable rulemaking authority that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit.

R33-8-101a. Sole Source Contract Awards.

(1) The underlying purposes and policies of the Utah Procurement Code are to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. Sole source contract awards do not involve a standard procurement process and should only be used when justified after reasonable research has been conducted to determine if there are other available sources and an analysis has been conducted to determine if a sole source award is cost justified.

(2) Circumstances for which a sole source contract award may be justified include procurements for:

(a) A procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;

(b) A component or replacement part for which there is no commercially available substitute, and which can be obtained only directly from the manufacturer; or

(c) An exclusive maintenance, service, or warranty agreement.

(3) Prior to awarding a sole source contract, the chief procurement officer or head of a procurement unit with independent procurement authority shall, whenever practicable, conduct a price analysis in accordance with Section R33-12-603.

(4) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a contract without engaging in a standard procurement process.

R33-8-101b. Transitional Costs -- Cost-Benefit Analysis.

(1) For the purpose of this section, the following definitions shall apply:

(a) "Competing type of procurement item" means a type of procurement item that is the same, equivalent, or superior to the existing type of procurement item currently under contract in all material aspects including:

(i) performance;

(ii) specifications;

(iii) scope of work; and

(iv) provider qualifications, certifications, and licensing.

(b) "Competing provider" means another provider other than the existing provider under contract that provides a competing type of procurement item.

(c) "Significant", "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:

(i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and

(ii) provides a compelling justification for not conducting a competitive standard procurement process.

(2) Transitional costs that must be considered in a cost-benefit analysis include:

(a) Costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(b) A full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items in order to determine which procurement item is more cost-effective.

(3) Transitional costs that may be considered in a cost-benefit analysis include:

(a) Costs identified in Subsection 63G-6a-103;

(b) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted within the last 12 months;

(c) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted prior to the most recent 12 months, updated using an applicable price index;

(d) Written cost estimates obtained by the conducting procurement unit from a competing provider(s) for a competing type of procurement item; and

(e) Other transitional costs determined to be applicable by the chief procurement officer or head of a procurement unit with independent procurement authority.

(4) Transitional costs or other information that may not be considered in a cost-benefit analysis include:

(a) Costs prohibited in Subsection 63G-6a-103;

(b) Data provided by the existing provider for the purpose of establishing:

(i) the market value of the existing type of procurement item; or

(ii) a competing provider's price for a competing type of procurement item;

(c) Costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;

(d) Non-monetary factors, such as the provider's performance, agency preference, and other data or information not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;

(e) Factors other than the monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(f) Other transitional costs or other information deemed inappropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

(5) The conducting procurement unit shall complete a written cost-benefit analysis and submit it to the issuing procurement unit for approval.

(6) The cost-benefit analysis should not be overly time-consuming to complete or involve hiring costly consultants or financial analysts.

R33-8-101c. Other Circumstances That May Make

Awarding a Contract Through a Standard Procurement Process Impractical.

(1) In accordance with Section 63G-6a-802(1)(c), the chief procurement officer or head of a procurement unit with independent procurement authority may consider, as applicable, the following circumstances when making a determination as to whether awarding a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:

(a) a contract award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(b) public utility services, when only one public utility service is available in an area;

(c) an item where compatibility is the overriding consideration; or

(d) a used procurement item that presents a unique, specialized, or time-limited buying opportunity.

R33-8-101d. Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1)(a) The division shall make available a Form titled: "Notice of intent to award a contract without engaging in a standard procurement process" that requires the conducting procurement unit to provide, at a minimum, the following information:

(i) a description of the procurement item, including, when applicable, the proposed scope of work;

(ii) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(iii) the duration of the proposed contract;

(iv) the signature of an authorized official of the conducting procurement unit; and

(v) research completed by the conducting procurement unit documenting that:

(A) There are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-8-101a;

(B) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis documenting that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101b; or

(C) Other circumstances that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101c.

(b) A procurement unit with independent procurement authority may use the division's Form or develop its own Form to provide notice of intent to award a contract without engaging in a standard procurement process that contains, at a minimum, the same basic information in Subsection (1)(a).

(c) The conducting procurement unit shall submit in writing a completed "Notice of intent to award a contract without engaging in a standard procurement process" to the chief procurement officer, or head of a procurement unit with independent procurement authority for approval.

R33-8-101e. Public Notice -- Waiver of Public Notice.

(1) Except as provided in Subsection (2), publication of a "Notice of intent to award a contract without engaging in a standard procurement process" shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds $50,000.

(2)(a) When making a determination under Sections R33-8-101a, 101b, or 101c, the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement to publish the "Notice of intent to award a contract without engaging in a standard procurement process" for the following procurements:

(i) procurements of $50,000 or less;

(ii) public utility services;

(iii) conference and convention facilities with unique or specialized amenities, abilities, location, or services;

(iv) conference fees, including materials;

(v) speakers or trainers with unique or proprietary presentations or training materials;

(vi) hosting of in-state, out-of-state, and international dignitaries;

(vii) international, national, or local promotion of the state or a public entity,

(viii) an award when the Legislature identifies the intended recipient of a contract;

(ix) an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(x) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or

(xi) other circumstances as determined in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority.

(b) The chief procurement officer or head of a procurement unit with independent procurement authority may require publication of a "Notice of intent to award a contract without engaging in a standard procurement process" for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

R33-8-101f. Contesting a Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1) A person may contest the notice of intent to award a contract without engaging in a standard procurement process prior to the closing of the public notice period set forth in Section 63G-6a-112 by submitting the following information in writing to the chief procurement officer or head of a procurement unit with independent procurement authority:

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation that:

(i) there are other competing sources for the procurement item;

(ii) transitional costs are not significant, unreasonable, or cost-prohibitive; or

(iii) conducting a standard procurement process is in the best interest of the conducting procurement unit.

(2) Upon receipt of a challenge contesting an award of a contract without engaging in a standard procurement process, the chief procurement officer or the head of a procurement unit with independent procurement authority shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

(a) If a challenge is upheld, the conducting procurement unit shall conduct a standard procurement process for the procurement item being considered or cancel the procurement;

(b) If a challenge is not upheld, the conducting procurement unit may proceed with awarding a contract without engaging in a standard procurement process.

(3) A vendor's right to file a protest under Title 63G, Chapter 6a; Part 16, is not waived by a vendor's actions to

contest or challenge a procurement unit's notice of intent to award a contract without engaging in a standard procurement process under Section R33-8-101f.

R33-8-102. Reserved.
Reserved.

R33-8-110. Extension of a Contract Without Engaging in a Standard Procurement Process.

(1) One of the underlying purposes and policies of the Utah Procurement Code is to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.

(2) Pursuant to Section 63G-6a-103, "contract administration" is a duty of the conducting procurement unit and includes all functions, duties, and responsibilities associated with closing out a contract. In fulfillment of these duties, the conducting procurement unit shall maintain a process or system for tracking contract expiration dates in order to determine well in advance of a contract expiration date if there is a continuing need for the procurement item. If the conducting procurement unit determines there is a continuing need for the procurement item, the conducting procurement unit shall whenever practicable:

(a)(i) Initiate a standard procurement process no later than 90 days prior to the contract expiration date of an existing contract; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item; or

(b)(i) If the conducting procurement unit determines that a procurement will be complex or involve a change in industry standards or new specifications requiring negotiations, no later than 180 days prior to the contract expiration date, initiate a standard procurement process; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item.

(3) The following do not justify an extension of a contract under Section 63G-6a-802.7:

(a) A procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and

(b) A procurement unit or vendor's intentional delay in executing a contract to replace an expiring contract.

(4) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension, may be classified as "steering a contract to a favored vendor" which is reportable as unlawful conduct under Section 63G-6a-2407.

R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.3, Utah Procurement Code.

R33-8-301. Reserved.
Reserved.

R33-8-401. Emergency Procurement.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

(2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

(3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

(a) Circumstances that may create harm or risk to health, welfare, safety, or property include:

(i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;

(ii) failure or eminent failure of a public building, equipment, road, bridge or utility;

(iii) terrorist activity;

(iv) epidemics;

(v) civil unrest;

(vi) events that impair the ability of a public entity to function or perform required services;

(vii) situations that may cause harm or injury to life or property; or

(viii) other conditions as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

(5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R33-8-501. Declaration of "Official State of Emergency".

Upon a declaration of an "Official State of Emergency" by the authorized state official, the chief procurement officer shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

KEY: government purchasing, exceptions to procurement requirements, emergency procurements
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.

R33-9. Cancellations, Rejections, and Debarment.

R33-9-101. Cancellation Before Opening.

(1) A solicitation under a standard procurement process may be canceled prior to the deadline for receipt of a solicitation response when it is in the best interests of the procurement unit as determined by the issuing procurement unit. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

(a) re-solicit new responses to a solicitation using a standard procurement process using the same or revised specifications; or,

(b) withdraw the requisition for the procurement item(s).

R33-9-102. Re-solicitation.

(1) In the event there is no response to an initial solicitation, the chief procurement officer or head of a procurement unit with independent procurement authority may:

(a) contact the known supplier community to determine why there were no responses to the solicitation;

(b) research the potential vendor community; and,

(c) based upon the information in (a) and (b) require the conducting procurement unit to modify the solicitation documents.

(2) If the conducting procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the chief procurement officer or head of a procurement unit with independent procurement authority, shall:

(a) require the conducting procurement unit to further modify the procurement documents; or,

(b) cancel the requisition for the procurement item(s).

(3) An executive branch procurement unit may not reissue a canceled solicitation unless:

(a) The chief procurement officer determines that all of the issues identified in the written justification for canceling the solicitation set forth in R33-9-103 have been resolved.

R33-9-103. Cancellation Before Award But After Opening.

(1) A solicitation under a standard procurement process may be cancelled before award but after the opening of solicitation responses when the issuing procurement unit determines in writing that:

(a) the scope of work or other requirements contained in the solicitation documents were not met by any person and all solicitation responses have been determined to be either nonresponsive or not responsible;

(b) an infraction of code, rule, or policy has occurred;

(c) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;

(d) the specifications in the solicitation have been or must be revised;

(e) the procurement item(s) being solicited are no longer required;

(f) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;

(g) solicitation responses received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

(h) except as provided in Section 63G-6a-607, all otherwise acceptable solicitation responses received are at unreasonable prices, or only one solicitation response is received and the chief procurement officer or head of a procurement unit with independent procurement authority cannot determine the reasonableness of the bid price or cost proposal;

(i) other reasons specified in 63G-6a or Administrative Rule; or

(j) other circumstances deemed to constitute reasonable cause by the chief procurement officer or head of a procurement unit with independent procurement authority.

(3) Notwithstanding the above, a procurement unit may not cancel and reissue a solicitation:

(a) To steer a contract to a favored vendor; or

(b) Except as permitted under the protest and appeal provisions set forth in Utah Code 63G-6a, Parts 16 and 17, to make a vendor who was previously disqualified or rejected in a solicitation for the procurement item eligible for a contract award for the same procurement item.

R33-9-104. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for receipt of solicitation responses that may delay award beyond the bidders', offerors', or person's acceptance periods, the bidders, offerors, or persons should be requested, before expiration of their solicitation responses, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R33-9-105. Award of a Contract After Cancellation for Cause or by Mutual Agreement.

(1) If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first twelve months of the contract term and the procurement item is still needed by the procurement unit, the chief procurement officer or head of a procurement unit with independent procurement authority shall make a determination as to whether it is in the best interest of the procurement unit to award a contract for the balance of the scope of work, as set forth in the solicitation, to:

(a) the responsible vendor with a responsive solicitation response, meeting all minimum score thresholds set forth in the solicitation:

(i) having the next lowest bid in an invitation for bids procurement process and in accordance with the provisions set forth in Utah Code 63G-6a, Part 6 and Administrative Rule R33; or

(ii) with the next highest total score or other authorized method to award a contract in accordance with the provisions of:

(A) the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 and Administrative Rule R33;

(B) the approved vendor list procurement process set forth in Utah Code 63G-6a-507 and R33; or

(C) the design professional procurement process set forth in Utah Code 63G-6a, Part 15 and Administrative Rule R33; or

(b) issue a new solicitation for the procurement item.

(2) The chief procurement officer or head of a procurement unit with independent procurement authority shall consider the following when making a determination under Subsection (1):

(a) the fair and equitable treatment of all persons currently involved or that may be involved in the procurement process pertaining to the procurement item;

(b) the length of time that has passed between the initial procurement and cancellation of the awarded contract;

(c) the applicability and competitiveness of prices submitted in response to the initial procurement;

(d) the willingness of the vendor to maintain prices submitted in the vendor's initial response to the solicitation for the full scope of work or, as applicable, remaining proportionate scope of work;

(e) the vendor's availability and ability to perform the work;

(f) the existence of additional or new vendors who may be

available and willing to submit responses to a new solicitation for the procurement item;

(g) costs and time delays to the procurement unit associated with conducting a new procurement; and

(h) other applicable issues unique to the solicitation or procurement item.

(3) This rule may not be used:

(a) If a contract is cancelled by a procurement unit for convenience;

(b) To extend the contract beyond the contract period identified in the solicitation; or

(c) If a contract is cancelled after the first twelve months of the contract period.

R33-9-201. Rejection of a Solicitation Response.

An issuing procurement unit may reject any or all solicitation responses, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

R33-9-202. Conformity to Solicitation Requirements.

(1)(a) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.

(b) Any solicitation response that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate solicitation responses and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.

(c) Any solicitation response that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

(2) A solicitation response shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability for the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to another person. For example, solicitation responses shall be rejected in which the person:

(a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;

(b) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;

(c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;

(d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or

(e) limits rights of the State under any contract clause.

R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority:

(a) Shall, subject to Section 63G-6a-903 and, as applicable, Section 63G-6a-604, reject a bid if the bid is determined not responsive or the bid is submitted by a bidder determined to be not responsible;

(b) May reject a solicitation response to any other type of standard procurement process if the solicitation response is determined to be not responsive or the solicitation response is submitted by a person determined to be not responsible; and

(c) Subsections (a) and (b) shall be conducted in accordance with the definitions of Responsible and Responsive set forth in Section 63G-6a-103.

(2) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.

(3) All written findings with respect to such rejections shall be made part of the procurement file and available for public inspection.

R33-9-301. Rejection for Suspension/Debarment.

Solicitation responses received from any person that is suspended, debarred, or otherwise ineligible as of the deadline for receipt of solicitation responses shall be rejected.

KEY: government purchasing, cancellations, rejections, debarment
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.
R33-11. Form of Bonds.
R33-11-101. Definitions.

(1)(a) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.

(b) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-11-201. Bid Security Requirements for Projects.

(1) Invitations for Bids and Requests for Proposals for construction contracts estimated to exceed $50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.

(2) Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the chief procurement officer or the head of a procurement unit with independent procurement authority determines it is in the best interest of the procurement unit

(3) If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except as provided by Rule R33-6-108, Rule R33-6-109 or Rule R33-11-202.

(4) The chief procurement officer or head of a procurement unit with independent procurement authority may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in Rule R33-11-201(1).

R33-11-202. Acceptable Bid Security Not Furnished.

(1) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer or head of a procurement unit with independent procurement authority to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(a) the bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Rule R33-11-303(1)(b) and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the procurement notified the contractor of the defective bid security; or

(b) only one bid is received, and there is not sufficient time to re-solicit; or

(c) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(d) the bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification, if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

(2) If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required under Rule R33-11-2, then the bidder's bid security may be forfeited.

R33-11-301. Performance Bonds for Construction Contracts.

A performance bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the procurement unit within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

R33-11-302. Surety or Performance Bonds for Non-construction Procurement Items.

(1) A surety or performance bond may be required on any non-construction contract if the chief procurement officer or head of a procurement unit with independent procurement authority deems it necessary to guarantee the satisfactory completion of a contract, provided:

(a) The solicitation contains a statement that a surety or performance bond is required in an amount:

(i) equal to the amount of the bid, offer, or other response;

(ii) equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;

(iii) equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or

(iv) The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amounts contained in (a), is required; and

(b) The solicitation contains a detailed description of the work to be performed for which the surety or performance bond is required.

(2) Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

R33-11-303. Payment Bonds.

(1) A payment bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

For executive branch procurement units:

(a) Bid Bonds, Payment Bonds and Performance Bonds submitted by vendors to executive branch procurement units must be from sureties meeting the requirements of Rule R33-11-303(1)(b) and must be on the required bond forms;

(b) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued.

(2) The chief procurement officer, or head of a procurement unit with independent procurement authority, may waive any bonding requirement if it is determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority that:

(a) bonds cannot reasonably be obtained for the work involved;

(b) the cost of the bond exceeds the risk to the procurement unit; or

(c) bonds are not necessary to protect the interests of the procurement unit.

(3) If the conducting procurement unit fails to obtain a payment bond it shall be subject Utah Code Title 14, Chapter 1.

KEY: bid security, performance bonds, payment bonds, procurement procedures
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Division of Purchasing and General Services.

R33-12. Terms and Conditions, Contracts, Change Orders and Costs.

R33-12-101. Required Contract Clauses.

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

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

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

(a) a category of procurement items;

(b) a specific procurement item;

(c) general use in all procurements;

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

(e) the requirements of federal funding.

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

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

(i) the terms and conditions are unduly restrictive;

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

(iii) places the state at increased risk.

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

R33-12-301. Awarding Multiple Award Contracts.

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

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

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

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

(i) delivery;

(ii) service;

(iii) product availability; or

(iv) Compatibility with existing equipment or infrastructure.

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

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

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

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

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

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

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

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

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

(b) lowest bid by Category provided:

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

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

(c) lowest bid by line item provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R33-12-302. Primary and Secondary Contracts.

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

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

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

R33-12-303. Intent to Use.

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

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

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

R33-12-402. Prepayments.

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

R33-12-403. Leases of Personal Property.

Leases of personal property are subject to the following:

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

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

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

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

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

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

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

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

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

R33-12-404. Multi-Year Contracts.

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

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

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

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

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

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

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

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

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

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

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

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

R33-12-605. Right to Audit.

(1) As used in this rule:
(a) "Authorized representative" includes:
(i) A purchasing procurement unit;
(ii) An internal auditor or other employee of the procurement unit;
(iii) An audit firm, consultant or examiner under contract with the procurement unit;
(iv) The State Auditor;
(v) The Legislative Auditor General; or
(vi) Federal auditors.
(b) "Books and records" mean all written or electronic information pertaining to the applicable contract between the procurement unit and the contractor including;
(i) Accounting information, financial statements, files, invoices, reports, and statements;
(ii) Pricing data;
(iii) Usage reports;
(iv) Transaction histories;
(v) Delivery logs;
(vi) Contracts, contract amendments, and other legal documents; and
(vii) Performance evaluations.
(2) Any contract between a contractor and a procurement unit which involves the expenditure of public funds may include or incorporate by reference a right to audit clause that may contain the following provisions:
(a) A statement indicating that the procurement unit or its authorized representative has the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract;
(b) Notification procedures for initiating an audit and reporting audit findings;
(c) Dispute resolution procedures, including, to the extent practicable, negotiation, settlement, and final resolution of audit findings;
(d) A statement requiring the contractor and its subcontractors to :
(i) maintain all books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until all audits initiated under this section within the six-year period have been completed, whichever is later;
(ii) Establish and maintain an accounting and record-keeping system that enables the procurement unit or its authorized representative to readily have access to the contractor's books and records in both written and electronic format;
(iii) Upon request, provide to the procurement unit or its authorized representative an electronic copy of the contractor's books and records within thirty (30) days of the request;
(iv) Allow the procurement unit or its authorized representative to interview the contractor's employees, agents, subcontractors, partners, resellers, and any other person who might reasonably have information related to the contractor's performance of of the contract.
(v) Correct errors and repay overcharges to the contracting procurement unit within thirty days of receiving written notice of the errors or overcharges documented in an audit finding;
(A) all payments relating to overcharges or other audit findings involving state cooperative contracts shall be repaid to the Utah Division of Purchasing; and
(vi) If contract errors or overcharges are in dispute, correct errors and repay overcharges within thirty days of receipt of a notice of decision issued by the chief procurement officer, the head of a procurement unit with independent procurement authority after a hearing has been conducted to attempt to resolve the dispute, or a court order.
(e) A statement indicating that:
(i) the procurement unit or its authorized representative have the right to audit the contract at any time during or after the term of the contract between the contractor and the procurement unit; including the right to examine, make copies of, or extract data from any record required to be maintained by the contractor;
(ii) An audit or other request shall:
(A) Be limited to records or other information related to or pertaining to the applicable contract;
(B) Include access to all records necessary to properly account for the contractor's performance under the contract and the payments made by the procurement unit to the contractor; and
(C) Be carried out at a reasonable time and place.
(f) A notice that if a contractor fails to maintain or provide records in accordance with the provisions of the contract, the procurement unit may:
(i) Deem the contractor to be in breach of its contract with the procurement unit;
(ii) Enter into negotiations with the contractor to initiate a corrective action plan to bring the contractor into compliance; or
(iii) Cancel the contract.
(g) A notice that the procurement unit may initiate debarment or suspension proceedings against a contractor under Section 63G-6a-904, or pursue other legal action, for any of the following:
(i) Failure to respond to an audit;
(ii) Failure to correct errors or repay overcharges;
(iii) An illegal act or fraud documented in an audit; or
(iv) Other reasons as determined by the chief procurement officer of head of a procurement unit with independent procurement authority.

R33-12-607. Applicable Credits.

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

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

(1) In dealing with contractors operating according to federal cost principles, the chief procurement officer or head of a procurement unit with independent procurement authority, may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in contract negotiations.
(2) In contracts not awarded under a program which is funded by federal assistance funds, the chief procurement officer or head of a procurement unit with independent procurement authority may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The chief procurement officer or head of a procurement unit with independent procurement authority and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.
(3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document

conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

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

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

R33-12-701. Inspections.

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

(1) whether the definition of "responsible", has been met or is capable of being met; and

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

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

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

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

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

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

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

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

R33-12-704. Conduct of Inspections.

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

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

KEY: terms and conditions, contracts, change orders, costs
June 21, 2017 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.

R33-13. General Construction Provisions.

R33-13-101. Purpose.

The purpose of this rule is to comply with the provisions of Sections 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-13-201. Construction Management Rule.

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts;

(2) documenting the selection of a particular method of construction contract management; and

(3) the selection of a construction manager/general contractor.

R33-13-202. Application.

The provisions of Rules R33-13-201 through R33-13-205 shall apply to all procurements of construction. Rule R33-5-106 establishes the requirements and thresholds for small construction projects. Construction procurement bid security and bonding requirements are contained in Part 11 of the Utah Procurement Code and Rule R33-11.

R33-13-203. Methods of Construction Contract Management.

(1) This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) It is intended that the chief procurement officer or head of a procurement unit with independent procurement authority have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Before choosing the construction contracting method to use, a careful assessment must be made by the chief procurement officer or head of a procurement unit with independent procurement authority of requirements the project shall consider, at a minimum, the following factors:

(a) when the project must be ready to be occupied;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;

(h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;

(i) the results achieved on similar projects in the past and the methods used; and

(j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(5) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.

(a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(b) Multiple Prime Contractors. Under the multiple prime contractor method, the procurement unit contracts directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the procurement unit's drawings and specifications. The procurement unit may have primary responsibility for successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.

(c) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(d) Construction Manager Not at Risk. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.

(e) Construction Manager/General Contractor (Construction Manager at Risk). The procurement unit may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R33-13-204. Selection of Construction Method Documentation.

The chief procurement officer or head of a procurement unit with independent procurement authority shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R33-13-205. Special Provisions Regarding Construction Manager/General Contractor.

(1) In the selection of a construction manager/general

contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.

(2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the CM/GC shall procure the subcontractor(s) by using a standard procurement process as defined in Section 63G-6a-103 of the Utah Procurement Code or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.

(3)(a) As used in this Rule, "management fee" includes only the following fees of the CM/GC:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(b) When selecting a CM/GC for a construction project, the evaluation committee:

(i) may score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

(iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(iv) except as provided in Section 63G-6a-707, may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

R33-13-301. Drug and Alcohol Testing Required for State Contracts: Definitions.

(1) The following definitions shall apply to any term used in Rules R33-13-301 through R33-13-304:

(a) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position, that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(b) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(c) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(d) For purposes of Subsection R33-13-302(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division;

(iii) an agency;

(iv) a board including the Procurement Policy Board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(e) "State construction contract" means a contract for design or construction entered into by a state public procurement unit that is subject to this Rule R33-13-302 through R33-13-304.

(2) In addition:

(a) "Board" means the Procurement Policy Board created under provisions of the Utah Procurement Code.

(b) "State Public Procurement Unit" means a State of Utah public procurement unit that is subject to Section 63G-6a-1303.

(c) "State" as used throughout this Rule R33-13-302 through R33-13-304 means the State of Utah except that it also includes those entities described in Subsection R33-13-302(1)(e) as the term "state" is used in Subsection R33-13-302(5).

R33-13-302. Drug and Alcohol Testing.

(1) Except as provided in Section R33-13-303, on and after July 1, 2010, a State Public Procurement Unit may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the State Public Procurement Unit that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the State Public Procurement Unit, which shall be demonstrated by a provision in the contract where the contractor acknowledges these Rules R-33-13-302 through 304 and agrees to comply with all aspects of these Rules R-33-13-302 through 304, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R33-13-302(2), if a contractor or subcontractor fails to comply with Subsection R33-13-302(1), the contractor or subcontractor may be suspended or debarred in accordance with these Rules R33-13-302 through R33-13-304.

(b) On and after July 1, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to these Rules R33-13-302 through R33-13-304.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R33-13-302(1).

(ii) A subcontractor is not subject to penalties for the

failure of a contractor to comply with Subsection R33-13-302(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R33-13-302(1) is that the contractor, by executing the construction contract with the State Public Procurement Unit, is deemed to certify to the State Public Procurement Unit that the contractor, and all subcontractors under the contractor that are subject to Subsection R33-13-302(1), shall comply with all provisions of these Rules R33-13-302 through R33-13-304 as well as Section 63G-6a-1303; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the State Public Procurement Unit in writing information that indicates compliance with the provisions of these Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6a-1303. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Sections 63G-6a-1303 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R33-13-302(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under the Utah Procurement Code; and

(b) may not be used by a State Public Procurement Unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After a State Public Procurement Unit enters into a state construction contract in compliance with Section 63G-6a-1303, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6a-1303.

(b) The state is not liable in any action related to Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R33-13-303. Non-applicability.

(1) These Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303 does not apply if the State Public Procurement Unit determines that the application of these Rules R33-13-302 through R33-13-304 or Section 63G-6a-1303 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R33-13-304. Not Limit Other Lawful Policies.

If a contractor or subcontractor meets the requirements of Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, this Rule R33-13 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

KEY: construction management, general construction provisions, drug and alcohol testing, state contracts
June 21, 2017 63G-6a

R33. Administrative Services, Purchasing and General Services.

R33-15. Procurement of Design Professional Services.

R33-15-101. Application.

The provisions of Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-4-109. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

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

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

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

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

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

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

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

(ii) the scope of work to be performed;

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

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

(A) basic information about the person or firm;

(B) experience and work history;

(C) management and staff;

(D) qualifications and certification;

(E) licenses and certifications;

(F) applicable performance ratings;

(G) financial statements; and

(H) other pertinent information.

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

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

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

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

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

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

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

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

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

R33-15-305. Notice of Award.

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

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

R33-15-401. Written Justification Statements.

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

KEY: architects, engineers, government purchasing

June 21, 2017 63G-6a

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

Protests shall be conducted in accordance with the requirements set forth in Utah Code 63G-6a, Part 16. All definitions in the Utah Procurement Code shall apply to this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

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

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

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

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

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

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

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

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

(A) ambiguous;

(B) confusing;

(C) contradictory;

(D) unduly restrictive;

(E) erroneous;

(F) anticompetitive; or

(G) unlawful;

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

(vi) An allegation of bias or discrimination by officials representing the procurement unit or the evaluation committee or an individual committee member; or

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

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

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

(i) claims made after the applicable deadlines set forth in law, rule, or the solicitation document, that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;

(ii) vague or unsubstantiated claims or allegations that do not reference specific facts and evidence including, but not limited to, vague or unsubstantiated claims or allegations such as:

(A) the protestor should have received a higher score;

(B) another vendor should have received a lower score;

(C) a service or product provided by a protestor is better than another vendor's service or product;

(D) another vendor cannot provide the procurement item for the price bid or perform the services described in the solicitation;

(E) the procurement unit's eProcruement system or other electronic procurement system:

(i) was slow, not operating properly, or was difficult to use or understand;

(ii) could not be accessed or did not allow documents to be downloaded;

(iii) did not allow a response to be submitted after the deadline for receiving responses expired;

(F) the protestor did not receive individual notice of a solicitation or was otherwise unaware of a solicitation when a procurement unit has complied with the public notice requirement in Section 63G-6a-112; or

(G) officials representing the procurement unit or the evaluation committee or an individual committee member acted in a biased or discriminatory manner against the protestor.

(iii) Filing a protest requesting:

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

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

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

(3) Each of the claims and allegations listed in Subsection (2)(c)(ii) could serve as legitimate grounds for filing a protest if properly supported by relevant facts and evidence.

(4) In accordance with Section 63G-6a-1603, a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with Utah Code 63G-6a Part 16 or this Rule.

R33-16-201. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association. A person without legal authority shall be deemed to not have standing to file a protest.

R33-16-301. Intervention in a Protest.

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

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

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

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

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

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

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

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

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

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

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

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

KEY: conduct, controversies, government purchasing, protests
June 21, 2017 63G-6a

R33. Administrative Services, Purchasing and General Services.
R33-17. Procurement Appeals Panel.
R33-17-101. Statutory Requirements.

Appeals of a protest decision shall be conducted in accordance with the requirements set forth in 63G-6a, Part 17, Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule.

R33-17-101.1. Definitions.

(1) "Administrative review" as used in this rule means, in accordance with the provisions set forth in Utah Code 63G-6a-1702, an examination conducted by a procurement appeals panel of:

(a) The notice of appeal;

(b) The protest appeal record pertaining to a protest officer's written decision;

(c) If an optional informal hearing was held, responses to questions asked by a procurement appeals panel to assist the panel in understanding the basis of the appeal and information contained in the protest appeal record, but otherwise without taking any additional evidence or any additional ground for the appeal.

(2)(a) "Appeal" as used in this rule means: a protestor filing a notice of appeal requesting an administrative review of the protest appeal record pertaining to a protest officer's decision in accordance with all provisions set forth in Utah Code 63G-6a, Part 17; and

(b) Does not include the appeal of a debarment or suspension under 63G-6a-904.

(3) "Protestor" as used in this rule means: a person who files a protest under Utah Code 63G-6a, Part 16, including any intervening party authorized under Utah Code 63G-6a-1603 and Rule R33-16-301.

(4) "Uphold the Decision of the Protest Officer" as used in this rule means: to support and maintain the decision of the protest officer, including giving deference to the protest officer's decision on questions of fact because the protest officer stands in a superior position, in terms of understanding the procurement, the needs of the agency, applicable laws, rules, ordinances, and policies, from which to evaluate and weigh the evidence and assess the credibility and accuracy of the facts, evidence, laws, and, if applicable, witnesses.

R33-17-101.5. Procedures for Filing a Notice of Appeal.

(1) When filing a notice of appeal, a protestor shall:

(a) File the notice of appeal in accordance with the requirements set forth in Utah Code 63G-6a, Part 17 and the following procedures:

(b) File the notice of appeal with the chair of the procurement policy board by the deadline for filing and include:

(i) The address of record and email address of record of the party filing the notice of appeal;

(ii) A statement indicating that:

(A) The protestor is filing a notice of appeal; and

(B) Requesting an administrative review of the protest officer's decision;

(iii) A copy of the written protest decision;

(iv) If applicable, the required security deposit or bond; and

(v) Any other requirement set forth in Utah Code 63G-6a, Part 17;

(c) Not base a notice of appeal on a ground not specified in the person's protest under Section 63G-6a-1602 or new or additional evidence not considered by the protest officer.

(2) Any part of a notice of appeal that fails to comply with each of the requirements set forth in Utah Code 63G-6a, Part 17, this rule, a ground not specified in the person's protest under Section 63G-6a-1602, or new or additional evidence not considered by the protest officer shall be dismissed by the chair of the procurement policy board or the procurement appeals panel appointed to conduct the administrative review.

(3) The protest appeal record is restricted to the following:

(a) A copy of the protest officer's written decision;

(b) All documentation and other evidence the protest officer relied upon in reaching the protest officer's decision;

(c) The recording of the hearing, if the protest officer held a hearing;

(d) A copy of the protestor's written protest; and

(e) All documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.

R33-17-101.8. Procedures for Conducting an Administrative Review.

(1) When conducting an administrative review of a protest officer's decision, a procurement appeals panel:

(a) shall:

(i) Comply with all requirements set forth in Utah Code 63G-6a, Part 17 and this rule:

(ii) Conduct an administrative review of the appeal within 30 days after the day on which the procurement appeals panel is appointed, or before a later agreed to date, unless the appeal is dismissed by the chair of the procurement policy board:

(iii) Consider and decide the appeal based solely on:

(A) Without conducting a hearing:

(I) the notice of appeal; and

(II) the protest appeal record; or

(B) If an informal hearing is held:

(I) responses received during the informal hearing,

(II) the notice of appeal; and

(III) the protest appeal record; and

(iv) Not otherwise take any additional evidence or consider any additional ground for the appeal;

(v) Not consider any claim in the notice of appeal dismissed by the chair of the procurement policy board in consultation with the attorney general's office for noncompliance with Sections 63G-6a-1702(2)(3)(4), or 1703;

(vi) Uphold a protest officer's decision unless the procurement appeals panel determines that the protest officer's decision is arbitrary and capricious or clearly erroneous; and

(vii) Within seven days after the day on which the procurement appeals panel concludes the administrative review:

(A) issue a written decision of the appeal; and

(B) mail, email, or had deliver the written decision on the appeal to the parties to the appeal and to the protest officer; and

(b) May:

(i) Consult with the assistant attorney general assigned to the appeal;

(ii) Conduct the administrative review without conducting a hearing;

(iii) At the sole discretion of the procurement appeals panel, conduct an informal hearing if the procurement appeals panel considers a hearing to be necessary:

(A) ask questions and receive responses during the informal hearing to assist the procurement appeals panel in understanding the basis of the appeal and information contained in the protest appeal record;

(B) not take any additional evidence or consider any additional ground for the appeal; and

(iv) Dismiss an appeal if the appeal does not comply with the requirements of Utah Code 63G-6a.

R33-17-101.10. Determination Regarding Arbitrary and Capricious.

(1) If, after reviewing the notice of appeal, the protest

appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:

(a) There is a reasonable basis for the decision made by the protest officer and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not arbitrary and capricious and shall uphold the decision of the protest officer; or

(b) There is no reasonable basis for the protest officer's decision and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was arbitrary and capricious and shall remand the matter to the protest officer to cure the problem or render a new decision.

(2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was arbitrary and capricious.

R33-17-101.13. Determination Regarding Clearly Erroneous.

(1) If, after reviewing the notice of appeal, the protest appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:

(a) There is a reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not clearly erroneous and shall uphold the decision of the protest officer; or

(b) There is no reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was clearly erroneous and shall remand the matter to the protest officer to cure the problem or render a new decision.

(2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was clearly erroneous.

R33-17-102. Verification of Legal Authority.

A person filing an appeal to a protest decision may be asked to verify that the person has legal authority to file an appeal on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association. A person without legal authority shall be deemed to not have standing to file a notice of appeal.

R33-17-103. Informal Hearing.

(1) A hearing conducted under Part 17 shall be an informal procedure wherein the rules of evidence and civil procedures do not apply.

(2) A procurement appeals panel shall establish procedures for conducting an informal hearing including:

(a) establishing time limits and deadlines;

(b) determining who may address the procurement appeals panel; and

(c) determining other procedural matters.

(3) All communication during the informal hearing shall be directed to the coordinator of the procurement appeals panel.

(a) A recording shall be made of each informal hearing held on an appeal under Utah Code 63G-6a, Part 17.

R33-17-104. Expedited Proceedings.

A party to a protest having standing may submit a written request to the coordinator of the procurement appeals panel requesting that the administrative review be expedited. The coordinator of the procurement appeals panel shall consider the request and, if possible and practical, accommodate the request.

R33-17-105. Electronic Participation.

Any panel member or, if applicable, participant may participate electronically if:

(a) a request to participate electronically is submitted to the coordinator of the panel at least 24 hours in advance of the proceeding;

(b) the means for electronic participation, by phone, computer or otherwise, is available at the location; and

(c) the electronic means allows other members of the panel and, if applicable, other participants to hear the person or persons participating electronically.

KEY: hearings, Procurement Appeals Board, verification of legal authority
June 21, 2017 63G-6a

R33. Administrative Services, Purchasing and General Services.

R33-18. Appeals to Court and Court Proceedings.

R33-18-101. Process.

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

(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Utah Code 63G-6a, Part 18. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

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

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

KEY: appeals, protests, Utah Court of Appeals
June 21, 2017 63G-6a

R33. Administrative Services, Purchasing and General Services.

R33-19. General Provisions Related to Protest or Appeal.

R33-19-101. Encouraged to Obtain Legal Advice From Legal Counsel.

(1) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) Part 19 of the Utah Procurement Code contains provisions regarding:

(a) limitations on challenges of:

(i) a procurement;

(ii) a procurement process;

(iii) the award of a contract relating to a procurement;

(iv) a debarment; or

(v) a suspension; and

(b) the effect of a timely protest or appeal;

(c) the costs to or against a protester;

(d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;

(e) the effect of a violation found after award of a contract;

(f) the effect of a violation found prior to the award of a contract;

(g) interest rates; and

(h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

KEY: appeals, protests, general provisions, procurement code

June 21, 2017 63G-6a

R33. Administrative Services, Purchasing and General Services.
R33-21. Interaction Between Procurement Units.
R33-21-101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-21-201. State Cooperative Contracts.

(a) An executive branch procurement unit shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-506(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(b) In accordance with Section 63G-6a-2105, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R33-21-201e. Division May Charge Administrative Fees on State Cooperative Contracts -- Prohibition Against Other Procurement Units Charging Fees on State Contracts.

(1) In accordance with Section 63A-1-109.5, 63A-2-103, 63G-6a-303(2), and other applicable State of Utah law, the Director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization.

(2) The Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

R33-21-301. Discount Pricing for Large Volume Purchases for Items on State Contract.

(1) Eligible users of state cooperative contracts may seek to obtain additional volume discount pricing for large volume orders provided state cooperative contractors are willing to offer additional discounts for large volume orders.

(a) Eligible users may not coerce, intimidate or in any way compel vendors on state cooperative contracts to offer additional discount pricing.

(b) Eligible users seeking additional pricing discounts for large volume purchases shall issue a "Request for Price Quotations" to each vendor on a state cooperative contract for the procurement item being purchased.

(c) Executive branch procurement units without independent procurement authority shall contact the division to issue the request for price quotations.

(d) The request for price quotations shall include:

(i) a detailed description of the procurement item;

(ii) the estimated number or volume of procurement items that will be purchased;

(iii) the period of time that price quotations will be accepted, including the date and time price quotations will be opened;

(iv) the manner in which price quotations will be accepted;

(v) the place where price quotations shall be submitted; and

(vi) the period of time the price quotation must be guaranteed.

(e) Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

(f) Price quotations will be opened in the presence of a minimum of two witnesses.

(g) Price quotations will become public at the time of the opening.

(2) All terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.

(3) This process may not be used for:

(a) an anti-competitive practice such as:

(i) bid rigging;

(ii) steering a contract to a preferred state cooperative contractor;

(iii) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;

(iv) disclosing pricing or other confidential information prior to the date and time of the opening; or

(v) any other practice prohibited by the Utah Procurement Code.

(4) All sales resulting from the quotations received under the process conducted in accordance with Section R33-21-301 shall be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and shall be reported to the division.

KEY: cooperative purchasing, state contracts, procurement units
June 21, 2017 63G-6a

R33. Administrative Services, Purchasing and General Services.

R33-25. Executive Branch Insurance Procurement.

R33-25-101. Applicability and Standard Procurement Method.

(1) This rule only applies to executive branch procurement units.

(2) All new or renewal insurance purchases will be made in accordance with this Rule and the Utah Procurement Code.

(3) A procurement unit may use the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 to award a contract for insurance agents, brokers, and underwriting companies.

(4) A procurement unit may consider the following criteria to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in a request for proposals procurement process:

(a) financial resources of agent, broker and underwriting company;

(b) quality of prior service rendered to the state;

(c) service facilities available in-state;

(d) service reputation;

(e) experience and expertise in providing similar types of insurance;

(f) coverages and services to be provided;

(g) qualifications of key personnel; and

(h) any other criteria that will help to ensure the best possible coverage and service to the procurement unit.

(5) A procurement unit may establish minimum requirements and score thresholds to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in the request for proposals procurement process.

(6) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that an agent, broker, or underwriting company be rejected for being deemed not responsible, not meeting the mandatory minimum requirements, not meeting any applicable minimum score threshold or whose proposal is not responsive.

R33-25-102. Alternate Multiple Stage Bid Process.

(1) This rule only applies to executive branch procurement units.

(2) To avoid oversaturation of limited primary or reinsurance markets, a multiple stage bid process may be used at the option of the procurement unit.

(3) Agents, brokers, and underwriting companies must be qualified according to the evaluation criteria described in R33-25-101.

(4) The three highest ranked agents, brokers, or underwriting companies, as determined by the evaluation committee, will be deemed qualified to proceed to the final stage.

(5) Agents, brokers or underwriting companies who are qualified to proceed to the final stage must submit a list of markets in order of preference to the procurement unit. The procurement unit will, as equitably as practicable, assign no more than five and no less than three markets to each final bidder, based upon their preferences.

(6) Qualified agents, brokers or underwriting companies must then submit a responsive bid for each assigned market.

(7) Upon receipt of the bids, the procurement and contract award shall be conducted in accordance with Part 6 of the Utah Procurement Code.

KEY: alternate multiple stage bid process, executive branch insurance procurement, procurement methods, government purchasing

June 21, 2017 63G-6a

R35. Administrative Services, Records Committee.

R35-1. State Records Committee Appeal Hearing Procedures.

R35-1-1. Scheduling Committee Meetings.

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

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

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

R35-1-2. Procedures for Appeal Hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R35-1-4. Committee Minutes.

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

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

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

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

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

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

(c) When minutes are complete but awaiting official

approval, they are a public record and must be marked as "Draft."

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

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

KEY: government documents, state records committee, records appeal hearings
June 22, 2017 63G-2-502(2)(a)
Notice of Continuation June 3, 2014

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

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

R35-2-2. Declining Requests for Hearings.

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

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

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

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

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

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

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

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

KEY: government documents, state records committee, records appeal hearings
June 22, 2017 63G-2-403(4)
Notice of Continuation June 3, 2014

R58. Agriculture and Food, Animal Industry.
R58-21. Trichomoniasis.
R58-21-1. Authority.

(1) Promulgated under authority of Section 4-31-109.

(2) It is the intent of this rule to eliminate or reduce the spread of bovine trichomoniasis in Utah.

R58-21-2. Definitions.

(1) "Acceptable media" means any Department approved media in which samples may be transferred and transported.

(2) "Approved slaughter facility" means a slaughter establishment that is either under state or federal inspection.

(3) "Approved test" means a test approved by the state of origination to diagnose trichomoniasis in bulls. If the state of orgination has no approved test for the diagnosis of trichomoniasis it shall mean one sample tested by a method approved by the Department.

(4) "Brand" means a minimum of a 2 X 3 hot iron single character lazy V applied to the left of the tailhead of a bull, signifying that the bull is infected with the venereal disease, trichomoniasis.

(5) "Certified veterinarian" means a veterinarian who has been certified by the Utah Department of Agriculture and Food to collect samples for trichomoniasis testing.

(6) "Commuter bulls" means bulls traveling across state lines for grazing purposes while utilizing a Commuter Permit Agreement approved by both the respective State Veterinarians or bulls traveling on a Certificate of Veterinary Inspection where there is no change of ownership.

(7) "Confinement" means bulls held in such manner that escape is improbable. Typical barbed wire or net pasture fencing does not constitute confinement.

(8) "Department" means the Utah Department of Agriculture and Food.

(9) "Exposed to female cattle" means bulls with freedom from restraint such that breeding is a possible activity.

(10) "Feeder Bulls" means bulls not exposed to female cattle and kept in confinement for the purpose of feeding and only go to slaughter.

(11) "Negative bull" means a bull that has been tested with official test procedures and found free from infection by Tritrichomonas foetus.

(12) "Official tag" means a tag authorized by the Department that is placed in the right ear of a bull by a certified veterinarian after being tested for trichomoniasis. The color of the official tag shall be changed yearly.

(13) "Official test" means a test currently approved by the Department for detection of Tritrichomonas foetus.

(14) "Positive bull" means a bull that has been tested with official test procedures and found to be infected by Tritrichomonas foetus.

(15) "Positive herd" means any herd or group of cattle owned by one or more persons which shares common grazing or feeding operations and in which one or more animals has been diagnosed with trichomoniasis within the last 12 months.

(16) "Qualified feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows, or bulls. These animals shall be confined to a dry lot area which is used to upgrade or finish feeding animals going only to slaughter.

(17) "Test chart" means a document which certifies that a bull has been subjected to an official test for trichomoniasis and indicates the results of the test.

(18) "Trichomoniasis" means a venereal disease of bovidea caused by the organism Tritrichomonas foetus.

R58-21-3. Trichomoniasis - Sampling and Testing Procedures.

(1) Sample collection - Samples are obtained from a vigorous scraping of the bull's prepuce using a sterile syringe and new pipette on each bull.

(2) Sample handling - Samples shall be transferred and transported in approved media. Media should be maintained at 65 to 90 degrees Fahrenheit (18 to 32 degrees Celsius) during sampling and transport to clinic. Samples shall be set up for incubation within 24 hours of sampling. Samples shall also be protected from direct sunlight.

(3) Polymerase Chain Reaction (PCR) testing - The inoculated media shall be incubated at 98 degrees Fahrenheit (37 degrees Celsius) for 24 hours and then frozen. Samples may remain frozen for up to 3 weeks. The frozen sample(s) shall be sent overnight on postal approved frozen packs to the Utah Veterinary Diagnostic Laboratory (950 East 1400 North, Logan, Utah 84341) or an other approved laboratory for PCR testing.

R58-21-4. Trichomoniasis - Rules - Prevention and Control.

(1) All bulls twelve months of age and older, entering Utah, must be tested with an approved test for trichomoniasis by an accredited veterinarian prior to entry into Utah. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry.

(2) The following bulls are exempted from (1) above:

(a) Bulls going directly to slaughter or to a qualified feedlot,

(b) Bulls kept in confinement operations,

(c) Rodeo bulls for the purpose of exhibition, and

(d) Bulls attending livestock shows for the purpose of exhibition, only to be returned to the state of origin immediately after the event.

(3) Rodeo and exhibition bulls with access to grazing, or exposed to female cattle, or being offered for sale are required to be tested prior to entry.

(4) All bulls twelve months of age and older residing in Utah, and all commuter bulls must be tested with an official test for trichomoniasis annually, between October 1 and May 15 of the following year, or prior to exposure to female cattle according to approved sampling and testing procedures. All bulls must be classified as a negative bull prior to exposure to female cattle or offered for sale.

(5) Testing shall be performed by a certified veterinarian.

(a) All test results shall be recorded on test charts provided by the Department or electronic forms created by the certified veterinarian.

(i) Electronic forms shall have the following information:

(A) Veterinarian's name and contact information

(B) Owner's name and contact information

(C) Bull's trichomoniasis tag number, age, breed

(D) Date of collection

(E) Test results

(b) A copy of all test charts shall be submitted to the Department within ten (10) days of collecting the sample.

(6) All bulls twelve months of age and older being offered for sale for reproductive purposes in the state of Utah must be tested for trichomoniasis with an official test prior to sale. Bulls that have had contact with female cattle subsequent to testing must be re-tested prior to sale or transfer of ownership.

(7) It shall be the responsibility of the owner or his agent to declare, on the auction drive-in slip, the trichomoniasis status of a bull being offered for sale at a livestock auction.

(a) Untested bulls (i.e. bulls without a current trichomoniasis test tag), including dairy bulls, must be sold for slaughter only, for direct movement to a qualified feedlot, or confinement operation, unless untested bulls are tested prior to exposure to female cattle.

(8) Any bull which has strayed and commingles with female cattle may be required to be tested (or re-tested) for trichomoniasis. The owner of the offending bull shall bear all costs for the official test.

(9) All Utah bulls, which are tested, shall be tagged in the right ear with an official tag by the certified veterinarian performing the test.

(10) Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by a certified veterinarian upon receipt of the trichomoniasis test charts from the testing veterinarian.

(11) Bulls which bear a current trichomoniasis test tag from another state which has an official trichomoniasis testing program will be acceptable to the State of Utah providing that they meet all trichomoniasis testing requirements as described above.

R58-21-5. Trichomoniasis - Rules - Positive Bull.

(1) A bull is considered positive if a laboratory identifies Tritrichomonas foetus using an official test.

(2) All bulls testing positive for trichomoniasis must be reported within 48 hours to: 1) the owner, and 2) the State Veterinarian, by the certified veterinarian performing the test.

(4) The owner shall be required to notify the administrators of the common grazing allotment and any neighboring (contiguous) cattleman within ten days following such notification by the certified veterinarian.

(5) All bulls which test positive for trichomoniasis must be sent by direct movement within 14 days, to:

(a) Slaughter at an approved slaughter facility, or

(b) To a qualified feedlot for finish feeding and slaughter, or

(c) To an approved auction market for sale to one of the above facilities.

(d) An exemption to the 14 day requirement will be given by the State Veterinarian to owners of bulls that are required to be in a drug withdrawal period prior to slaughter.

(6) Such bulls must move only when accompanied by a VS 1-27 Form issued by the testing veterinarian or other regulatory official.

(7) Positive bulls entering a qualified feedlot, or approved auction market shall be identified with a lazy V brand on the left side of the tailhead by either the livestock inspector or the contract veterinarian, indicating that the bull is infected with trichomoniasis.

(8) All bulls from positive herds are required to have one additional individual negative Polymerase Chain Reaction (PCR) test prior to exposure to female cattle, unless they are being sent to slaughter, to a qualified feedlot, or being feed for slaughter in a confinement operation.

R58-21-6. Trichomoniasis - Rules - Non-compliance.

(1) Any person who fails to satisfy the requirements of this rule or who knowingly sells animals infected with trichomoniasis, other than to slaughter, without declaring their disease status shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

(2) After May 15, owners of all untested bulls will be fined $1,000.00 per violation.

(3) Owners of untested bulls that have been exposed to female cattle will be fined $1,000.00 per violation regardless of the time of year.

KEY: disease control, trichomoniasis, bulls, cattle
June 14, 2017 4-31-21
Notice of Continuation January 21, 2015

R65. Agriculture and Food, Marketing and Development.
R65-5. Utah Red Tart and Sour Cherry Marketing Order.
R65-5-1. Authority.

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

R65-5-2. Definitions of Terms.

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

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

C. "Cherries" mean all marketable Red Tart and Sour cherries produced and sold to manufacturers or consumers.

D. "Producer" means any person in this state in the business of producing or causing to be produced Red Tart or Sour cherries, that has a minimum of 300 trees or has received $500.00 or more from a processor for the previous year's production.

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

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

G. "Processor" means any person engaged in canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, or in any other way preserving or changing the form of cherries for the purpose of marketing them.

H. "Board" means Red Tart and Sour Cherry Marketing Board.

R65-5-3. Board.

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

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry. Three grower members and one processor member shall be appointed for a term of four years. Two grower members and one processor member shall be appointed for four years.

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

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

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

F. All decisions of the Board of Control shall be by majority vote.

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

R65-5-4. Provisions of the Order.

A. This order shall provide for:

1. Uniform grading Red Tart and Sour cherries for fresh or frozen markets, sold or offered for sale by producers or processors. Such grading standards shall not be established below any minimum standards now prescribed by law for this state.

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

3. Labeling, marketing, or branding of cherries which does not conflict with any rules of the Commissioner or laws of the State of Utah.

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

B. Expenses-Assessments-Collections and Disbursement.

1. Each producer or processor subject to this Order shall pay to the Board his or her pro rata share (as approved by the Commissioner) of such expenses as the Board may find necessary to be incurred for the functioning of said Marketing Order. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable when payment is called for thereby. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers or processors. The Board may maintain in its own name, or in the name of its members, a suit against any producer, or processor subject to this Order, for the collection of such producer's pro rata share of expenses.

2. This assessment shall be determined to be up to $10.00 per ton for Red Tart and Sour cherries. The discretionary assessment shall be set by majority vote of the board, as approved by the Commissioner. The assessment is effective May 1, 1983.

3. The assessment of each producer shall be deducted from the producer's gross receipt of Red Tart and Sour cherries by the producer-processor. All proceeds from the deducted portion shall be paid annually to the Board on or before October 1, for that crop year.

4. The Board shall retain records of the receipt of the assessment which will be available for public inspection upon request. The Board shall issue an annual financial statement to the Commissioner showing receipts and reimbursement. This statement shall be made available to any contributor upon request.

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

6. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-5-5.

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

R65-5-5. Division of Funds.

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

administrative, advertising and research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that no funds be used for political or lobbying activities.

R65-5-6. Complaints for Violation - Procedure.

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

R65-5-7. Termination of Order.

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

KEY: promotions
1989 4-2-2(1)(e)
Notice of Continuation June 29, 2017

R65. Agriculture and Food, Marketing and Development.
R65-11. Utah Sheep Marketing Order.
R65-11-1. Authority.

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

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the sheep producing industry. The commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum. It is therefore ordered by the commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah sheep industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-11-2. Definition of Terms.

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

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

C. "Sheep" means rams, ewes, or lambs.

D. "Producer" means a person owning at least 100 rams, ewes, or lambs.

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

F. "Handler" means an individual or an organization engaged in the merchandising of sheep or sheep products.

R65-11-3. Board.

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

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

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

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

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

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

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

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

3. to conduct educational programs and advertizing to promote sheep and sheep products.

4. to conduct research projects to improve the profitability of the Utah Sheep Industry,

5. to engage in any activity to promote the Utah sheep industry.

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

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

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

R65-11-4. Provisions of the Order.

A. This order provides for:

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

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

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

4. Research projects and experiments for the purpose of improving the general condition of the Sheep Industry and for the purpose of protecting the health of the people of Utah.

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

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per pound of wool shorn to the Board annually. The discretionary assessment shall be set by majority vote of the Board, and approved by the commissioner. The initial assessment shall be 2 cents per pound. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of wool. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. The assessment of each producer shall be deducted from the producer's gross receipt by the wool purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Sheep Board. Sheep spending part of the year in Utah shall be assessed pro rata based on the time spent in Utah.

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

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

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-6-5. Any funds

remaining at the end of any year over and above the necessary expenses of said Board may be divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year.

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

7. The Order shall become operational only if it is approved by at least 50 percent of the producers and handlers voting in the referendum or by producers and handlers who account for at least two-thirds of the production represented by persons voting in the referendum.

R65-11-5. Division of Funds.

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

A. administrative purposes,

B. educational purposes, advertising and promotional purposes, and

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

R65-11-6. Board - Member's Liability.

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

R65-11-7. Complaints for Violations - Producer.

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

R65-11-8. Termination of Order.

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

R65-11-9. Quarterly Meeting.

The Board shall meet at least quarterly.

KEY: promotions
March 19, 1998 4-2-2(1)(e)
Notice of Continuation June 29, 2017

R70. Agriculture and Food, Regulatory Services.
R70-520. Standard of Identity and Labeling Requirements for Honey.
R70-520-1. Purpose.

The purpose of this rule is to establish a standard of identity and labeling requirements for honey that is produced, packed, repacked, distributed and sold in Utah. Codification of this standard is meant to reduce economic fraud by controlling the pervasive, illegal practices of blending or diluting pure honey with low-cost syrups such as sugar, cane and corn, and representing highly processed honey as raw honey.

R70-520-2. Authority.

This rule is promulgated under the authority of Subsections 4-2-2(1)(g), 4-5-8(5), 4-5-6(1)(b), 4-5-15(1) and Sections 4-5-16 and 4-5-20 of the UCA.

R70-520-3. Definitions.

(1) "Honey" means the natural sweet substance produced by honeybees from nectar of plants or from secretions of living parts of plants which the bees collect, transform by combining with specific substances of their own, then deposit, dehydrate, store, and leave in the honeycomb to ripen and mature.

(2) "Blossom Honey" or "Nectar Honey" means honey that comes from the nectar of plants.

(3) "Comb" or "Comb honey" means honey stored by bees in the cells of freshly built broodless combs and sold in sealed whole combs or sections of such combs.

(4) "Raw honey" means honey:

(a) as it exists in the beehive or as obtained by extraction, settling, or straining;

(b) that is minimally processed; and

(c) that is not pasteurized.

(5) "Straining" means the process of removing particulate matter from honey by passing it through a metal or fabric screen or cloth with mesh large enough to pass pollen grains, enzymes and minerals.

R70-520-4. Standard of Identification for Honey.

(1) Honey shall meet the following standards:

(a) honey may not be heated or processed to such an extent that its essential composition is changed or its quality is impaired;

(b) chemical or biochemical treatments may not be used to influence honey crystallizations;

(c) honey may not contain more that 20 percent moisture content and for heather honey not more that 23 percent;

(d) honey may be not less that 60 percent fructose and glucose, combined; the ratio of fructose to glucose shall not be greater than 0.9;

(e) honey may not contain oligaosaccharides indicative of invert syrup;

(f) honey, except for honeycomb and cut comb style honey, may not contain more than 0.5g/1000g water insoluble solids.

R70-520-5. Standard of Identification for Blossom Honey.

(1) Blossom honey shall meet the standards for honey in R70-520-4;

(2) Blossom honey shall not contain more than 5 percent sucrose, except for the following:

(a) alfalfa (Medicago sativa), citrus spp, false acacia (Robinia pseudoacacia), French Honeysuckle (Hedysarum), Menzies banksias (Banksia menziesii), red gum (Eucalyptus camaldulensis), leatherwood (Eucalyptus lucida), and Eucryphia milligani may contain up to 10 percent sucrose.

(b) lavender (Lavandula spp) and borage (Borago officinalis) may contain up to 15 percent sucrose.

R70-520-6. Food Labeled as Honey or Raw Honey.

(1) Food meeting the standards set forth in R70-520-4 and R70-520-5 may be designated "honey".

(a) The food may be labeled as "raw honey" if it additionally meets R70-520-3(4).

(2) Food containing honey plus flavoring, spice or food additive shall be distinguished in the food name from honey by declaration of all of the added ingredients.

(3) Food containing honey may be designated according to floral or plant source if the honey comes predominately from that particular source and has the organoleptic, physicochemical and microscopic properties corresponding with that origin.

(a) Food designated according to the honey's floral source plant shall have the common name or the botanical name of the floral source in close proximity on the label to the word "honey".

(4) Honey may be designated according to the following styles:

(a) honey in liquid or crystalline state or a mixture of the two may be designated as "liquid" or "crystalline";

(b) honey meeting the definition of "comb" or "comb honey"; or

(c) honey containing one or more pieces of comb honey may be designated as "honey with comb" or "chunk honey".

(5) Labels shall meet the requirements of Chapter 4-5-15 UCU.

R70-520-7. Misbranded Food.

Food labeled as a honey or raw honey, but not meeting the standard of identification or a labeling requirement in Sections four through six of this rule shall be deemed to be misbranded.

R70-520-8. False Food Advertisement.

Food advertised as honey or raw honey shall be considered falsely advertised if it does not meet the standard of identification or a labeling requirement in Sections four through six of this rule.

R70-520-9. Embargo and Destruction of Misbranded Food.

When an authorized agent of the department finds or has cause to believe a honey product is misbranded, the agent may follow the tagging, embargo and destruction procedures found in Title 4-5-5 UCA.

KEY: food safety, honey
July 10, 2012 **4-2-2(1)(g)**
Notice of Continuation June 29, 2017 **4-5-8(5)**
4-5-6(1)(b)
4-5-16
4-5-15(1)
4-5-20

R123. Auditor, Administration.
R123-3. State Auditor Adjudicative Proceedings.
R123-3-1. Definitions.

A. The terms used in this rule are defined in Section 63G-4-103, U.C.A.

B. Agency means the Utah State Auditor's Office.

R123-3-2. Designation.

A. The agency designates all agency action subject to the scope and applicability of the Utah Administrative Procedures Act, Utah Code Ann. Section 63G-4-102 et seq. as informal proceedings.

R123-3-3. Adjudicative Proceedings.

A. The following categories of proceedings are hereby designated as informal proceedings under Utah Administrative Procedures Act, Utah Code Annotated Section 63G-4-202:

1. All agency actions with respect to local government accounting, budgeting and financial reporting procedures.

2. All agency actions with respect to audits or special projects performed by the agency or audits under their jurisdiction.

B. Procedures for all categories of informal adjudicative proceedings shall comply with applicable provisions of U.C.A 63G-4-203.

1. No response need be filed to the notice of agency action or request for agency action.

2. The agency shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for hearing is made within ten working days after receipt of the notice of agency action or request for agency action, otherwise, at the discretion of the State Auditor no hearing will be held.

3. Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence, and comment on the issues.

4. A hearing will not be held before ten working days after notice of the hearing has been given.

5. No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information contained in the agency's files and investigatory information and materials not restricted by law.

6. Intervention is prohibited unless a federal statute or rule requires that a state permit intervention.

7. Any hearing held under this rule is open to all parties.

8. Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the agency shall issue a written decision and the reasons for the decision, notice of any right of judicial review available to the parties and the time limits for filing an appeal to the appropriate District Court.

9. The State Auditor's decision shall be based on the facts in the agency file and if a hearing is held, the facts based on evidence presented at the hearing.

10. The agency shall notify the parties of the agency's order by promptly mailing copy thereof to each at the address indicated in the file.

11. All hearings recorded, shall be at the agency's expense. Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

12. Nothing in this section restricts or precludes any investigative right or power given to the agency by another statute.

KEY: administrative procedures, appellate procedures, auditing
1990 63G-4
Notice of Continuation June 7, 2017

R123. Auditor, Administration.
R123-4. Public Petitions for Declaratory Orders.
R123-4-1. Authority.

A. As required by Section 63G-4-503, this rule provides the procedures for submission, review and disposition of petitions for agency declaratory orders on the applicability of statutes, rules and orders governing or issued by the agency.

R123-4-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, except and in addition:

A. Agency means the Utah State Auditor's Office.

B. "Applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

C. "Declaratory Order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule or order.

R123-4-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the State Auditor, who shall mark the petition with the date of receipt.

B. The petition shall:

1. be clearly designated as a request for an agency declaratory order;

2. identify the statute, rule or order to be reviewed;

3. describe in detail the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous;

5. include an address and telephone where the petitioner can be contacted during regular work days; and

6. be signed by the petitioner.

R123-4-4. Reviewability.

A. The agency may not issue a declaratory order if the subject matter is:

1. not within the jurisdiction and expertise of the agency;

2. frivolous, trivial, irrelevant or immaterial;

3. likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to the determination of the matter by a declaratory proceeding;

4. one in which the person requesting the declaratory order has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; or

5. otherwise excluded by state and federal law.

R123-4-5. Intervention.

A. A person may file a petition for intervention in a declaratory proceeding only if they deliver to the State Auditor a petition complying with all of the requirements of Section 63G-4-207 within 20 days of the director's receipt of the petition for a declaratory order filed under Section 63G-4-503(4).

B. Petitions seeking declaratory orders will be designated as informal adjudicative proceedings.

R123-4-6. Petition Review and Disposition.

A. The agency will be governed by the provisions of Sections 63G-4-503 (6) and (7):

R123-4-7. Administrative Review.

A. A petitioner may seek review or reconsideration of a declaratory order by petitioning the State Auditor under the procedures of Section 63G-4-302.

KEY: declaratory orders
1990 63G-4
Notice of Continuation June 7, 2017

R123. Auditor, Administration.
R123-5. Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations.
R123-5-1. Authority.

1. As required by Section 51-2a-301, this rule provides the guidelines, qualifications criteria, and procurement procedures for audits required to be made by Section 51-2a-201.

R123-5-2. Definitions.

1. "Auditor" means a certified public accountant licensed to conduct audits in the state and includes any certified public accounting firm as defined by Section 58-26a-102.
2. "Political subdivision" means all cities, counties, school districts, local districts, interlocal organizations, and any other entity established by a local governmental unit that receives tax exempt status for bonding or taxing purposes.
3. "Nonprofit organization" means any corporation created under Chapter 16-6a.

R123-5-3. Audit Standards and Requirements.

1. The audits of all entities required to have an audit made by Section 51-2a-201 shall be performed in accordance with Government Auditing Standards most recently published and issued by the Comptroller General of the United States.
2. The State Auditor shall adopt and maintain a legal compliance audit guide containing those fiscal laws and compliance requirements for state funds distributed to, and expended by, political subdivisions and non-profit organizations. This legal compliance audit guide may specify:

a. which grants and programs shall be considered major grants, and the compliance requirements which must be tested by the auditor,

b. the general compliance requirements applicable to all political subdivisions, and the audit requirements applicable to general compliance requirements,

c. the format for the auditor's statement expressing positive assurance with state fiscal laws identified by the State Auditor, and

d. those items related to internal controls and other financial issues which shall be included in the auditor's letter to management that must be filed with the audited financial statements.

3. The audits of all entities required to have an audit made by Section 51-2a-201 shall be performed in accordance with the legal compliance audit guide maintained by the State Auditor.

R123-5-4. Audit Procurement.

The decision to retain an entity's auditor rests with the governing body of the entity. However, the auditor performing the audit must meet the peer review and continuing education requirements of Government Auditing Standards issued by the Comptroller General of the United States. If the governing body rebids the audit of its financial statements, it shall comply with the following audit procurement requirements:

a. Proposals will be obtained from any interested and qualified certified public accountant licensed to perform audits in the state, which may include the auditor currently performing the entity's audit. Notice may be given to potential auditors either through invitation or by notice published in a newspaper of general circulation. To promote competition it is recommended that at least three auditors be invited to participate in bidding for the audit.

b. The entity shall distribute a "request for proposal" to all auditors who meet the qualification criteria set by the procuring organization interested in bidding for the audit. As a minimum, the request for proposal shall contain the following:

(i) the name and address of the entity requesting the audit and its designated contact person,

(ii) the entity to be audited, the scope of services to be provided, and specific reports, etc. to be delivered,

(iii) the period to be audited,

(iv) the format in which the proposals should be prepared,

(v) the date and time proposals are due, and

(vi) the criteria to be used in evaluating the bid.

c. The entity may select the auditor or audit firm that the governing body desires to perform its audit and may reject any bid.

R123-5-5. Responsibility for Audit Quality.

1. The governing body of each political subdivision is responsible to ensure that the political subdivision obtains a quality audit of its financial records.
2. The governing body may appoint an audit committee with the responsibility of making recommendations to the governing body for selection of an auditor, ensuring that the auditor meets qualification requirements, and ensuring that the auditor complies with professional standards.
3. If the governing body appoints a separate audit committee, then the governing body shall review the recommendations of the audit committee and make the selection of the auditor.
4. The audit committee will report its assessment of the auditor's compliance with professional standards to the governing body.
5. The auditor shall report the results of the audit to the governing body.
6. The governing body shall respond to the specific recommendations included in the auditor's letter to management. This response shall be remitted with the audited financial statements to the state auditor.

KEY: auditing, non-profit organizations
1990 51-2a-201
Notice of Continuation June 7, 2017

R156. Commerce, Occupational and Professional Licensing.
R156-24b. Physical Therapy Practice Act Rule.
R156-24b-101. Title.

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

R156-24b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 24b, as used in Title 58, Chapters 1 and 24b or this rule:

(1) "A recognized accreditation agency", as used in Subsections 58-24b-302(1)(c) and (2)(c), means a college or university:

(a) accredited by CAPTE; or

(b) a foreign education program which is equivalent to a CAPTE accredited program as determined by the FCCPT.

(2) "Credential evaluation", as used in Subsections R156-24b-302a(2) and (3), means the appropriate Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist or physical therapist assistant graduated from the physical therapy program.

(3) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(4) "FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

(5) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(6) "Joint mobilization", as used in Subsection 58-24b-102(14)(d), means a manual therapy technique comprising a continuum of skilled passive movements to the joints and/or related soft tissues that are applied at varying speeds and amplitudes, including a small-amplitude/high velocity therapeutic movement.

(7) "Routine assistance", as used in Subsections 58-24b-102(10) and 58-24b-401(3)(b) means:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(8) "Supportive personnel", as used in Subsection R156-24b-503(1), means a physical therapist assistant or a physical therapy aide and does not include a student in a physical therapist or physical therapist assistant program.

(9) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-24b-502.

R156-24b-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 24b.

R156-24b-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.

R156-24b-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States shall document that the applicant's education is equal to a CAPTE accredited degree and that the applicant is able to read, write, speak, understand, and be understood in the English language by submitting to the Division a Type I review from the FCCPT. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

(a) humanities;
(b) social sciences;
(c) liberal arts;
(d) physical sciences;
(e) biological sciences;
(f) behavioral sciences;
(g) mathematics; or
(h) advanced first aid for health care workers.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

(a) an associates, bachelors, or masters program; or

(b) in accordance with Section 58-1-302, an applicant for a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

(a) humanities;
(b) social sciences;
(c) liberal arts;
(d) physical sciences;
(e) biological sciences;
(f) behavioral sciences;
(g) mathematics; or
(h) advanced first aid for health care workers.

(4) An applicant who has met all requirements for licensure as a physical therapist except passing the FSBPT National Physical Therapy Examination-Physical Therapist may apply for licensure as a physical therapist assistant.

R156-24b-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT, after submitting proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency. A passing score on the FSBPT's National Physical Therapy Examination shall be verified through a score transfer from the FSBPT.

(2) An applicant for licensure as a physical therapist who fails the FSBPT National Physical Therapy Examination-Physical Therapist is eligible to sit for the FSBPT National Physical Therapy Examination-Physical Therapist Assistant after submitting an application for licensure as a Physical Therapist Assistant.

R156-24b-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24b is established by rule in Section R156-1-308a.

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

R156-24b-303b. Continuing Education.

(1) Required Hours. In accordance with Subsection 58-24b-303(2), during each two year renewal cycle commencing on June 1 of each odd numbered year:

(a) A physical therapist shall be required to complete not fewer than 40 contact hours of continuing education of which a minimum of two contact hours must be completed in ethics/law.

(b) A physical therapist assistant shall be required to complete not fewer than 20 contact hours of continuing education of which a minimum of two contact hours must be completed in ethics/law.

(c) Examples of subjects to be covered in an ethics/law course for physical therapists and physical therapist assistants include one or more of the following:

(i) patient/physical therapist relationships;

(ii) confidentiality;

(iii) documentation;

(iv) charging and coding;

(v) compliance with state and/or federal laws that impact the practice of physical therapy; and

(vi) any subject addressed in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.

(d) The required number of contact hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

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

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

(a) Time. Each contact hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one contact hour of continuing education for every two hours of time spent:

(i) lecturing or instructing a course;

(ii) in a post-professional doctorate or transitional doctorate program; or

(iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.

(b) Course Content and Type. The course shall be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the course.

(i) The content of the course shall be relevant to the practice of physical therapy and shall be completed in the form of any of the following course types:

(A) department in-service;

(B) seminar;

(C) lecture;

(D) conference;

(E) training session;

(F) webinar;

(G) internet course;

(H) distance learning course;

(I) journal club;

(J) authoring of an article or textbook publication;

(K) poster platform presentation;

(L) specialty certification through the American Board of Physical Therapy Specialties;

(M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(N) post-professional doctorate from a CAPTE accredited program;

(O) lecturing or instructing a continuing education course; or

(P) study of a scholarly peer-reviewed journal article.

(ii) The following limits apply to the number of contact hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of 40 contact hours for initial specialty certification through the American Board of Physical Therapy Specialties (ABPTS);

(B) a maximum of 40 contact hours for hours spent in a post-professional doctorate or transitional doctorate CAPTE accredited program;

(C) a maximum of 40 contact hours for hours spent in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(D) a maximum of half of the number of contact hours required for renewal for lecturing or instructing in courses meeting these requirements;

(E) a maximum of ten percent of the number of contact hours required for renewal for supervision of a physical therapist or physical therapist assistant student in an accredited college program and the licensee shall receive one contact hour of credit for every 80 hours of clinical instruction;

(F) a maximum of 15 contact hours required for renewal for serving as a clinical mentor for a physical therapy residency or fellowship training program at a credentialed program and the licensee shall receive one contact hour of credit for every ten hours of residency or fellowship;

(G) a maximum of half of the number of contact hours required for renewal for online or distance learning courses that include examination and issuance of a completion certificate;

(H) a maximum of 12 contact hours for authoring a published, peer-reviewed article;

(I) a maximum of 12 contact hours for authoring a textbook chapter;

(J) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;

(K) a maximum of six contact hours for authoring a non-peer reviewed article or abstract of published literature or book review; and

(L) a maximum of six contact hours for authoring a poster or platform presentation.

(c) Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association, organization, or facility involved in the practice of physical therapy; or

(iv) a commercial continuing education provider providing a course related to the practice of physical therapy.

(d) Objectives. The learning objectives of the course shall be clearly stated in course material.

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

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

(i) At a minimum, the documentation shall contain the following:

(A) the date of the course;

(B) the name of the course provider;

(C) the name of the instructor;

(D) the course title;

(E) the number of contact hours of continuing education credit; and

(F) the course objectives.

(ii) If the course is self-directed, such as personal or group study or authoring of a scholarly peer-reviewed journal article, the documentation shall contain the following:

(A) the dates of study or research;

(B) the title of the article, textbook chapter, poster, or platform presentation;

(C) an abstract of the article, textbook chapter, poster, or platform presentation;

(D) the number of contact hours of continuing education credit; and

(E) the objectives of the self-study course.

(6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of continuing education during the two-year renewal cycle specified in Subsection (1), up to ten contact hours of the excess may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-24b-305. Temporary Licensure.

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

(a) submits a complete application for licensure as a physical therapist or physical therapist assistant except the passing of the NPTE examination;

(b) is a graduate of a CAPTE accredited physical therapy school within three months immediately preceding application for licensure;

(c) is under the direct, on-site supervision of a physical therapist with an active, non-temporary license if employed as a physical therapist; and

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

(2) A temporary physical therapist or temporary physical therapist assistant license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

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

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

(3) A temporary physical therapist or temporary physical therapist assistant license issued in accordance with this section cannot be renewed or extended.

R156-24b-308. Reinstatement of a Physical Therapist or Physical Therapist Assistant License which has Expired Beyond Two Years.

In addition to the requirements established in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a physical therapist or physical therapist assistant, whose license has been expired for two or more years, shall complete one or more of the following upon request of the Division in collaboration with the Board:

(1) meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy;

(2) pass the NPTE examination of the FSBPT if it is determined that examination or reexamination is necessary to verify the applicant's ability to safely and competently practice; and

(3) establish and carry out a plan of supervision under an approved supervisor which may include up to 4,000 hours of physical therapy training under a temporary physical therapist or physical therapist assistant license before qualifying for full reinstatement of the license.

R156-24b-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) violating, as a physical therapist, any provision of the American Physical Therapy Association's Code of Ethics for the Physical Therapist, last amended July 2010, which is hereby adopted and incorporated by reference;

(2) violating, as a physical therapist, any provision of the American Physical Therapy Association's Guide for Professional Conduct, last amended November 2010, which is hereby adopted and incorporated by reference;

(3) not providing supervision, as a physical therapist, as set forth in Section R156-24b-503;

(4) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended November 2010, which is hereby adopted and incorporated by reference; and

(5) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended July 2010, which is hereby adopted and incorporated by reference.

R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.

In accordance with Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

(1) a full-time equivalent physical therapist can supervise no more than three full-time equivalent supportive personnel unless approved by the board and Division; and

(2) a physical therapist shall provide treatment to a patient at least every tenth treatment but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

R156-24b-505. Trigger Point Dry Needling - Education and Experience Required - Registration.

(1) A course approved by one of the following organizations meets the standards of Section 58-24b-505 if it includes the hours and treatment sessions specified in Section 58-24b-505:

(a) American Physical Therapy Association (APTA) or any of its sections or local chapters; or

(b) Federation of State Boards of Physical Therapy (FSBPT).

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

June 8, 2017 58-24b-101

Notice of Continuation October 6, 2016 58-1-106(1)(a)

58-1-202(1)(a)

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

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

R156-42a-102. Definitions.

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

(1) "Manual therapy", as used in Subsection 58-42a-102(6)(b)(vii)(L), means the use of skilled hand movements to manipulate tissues of the body for a therapeutic purpose.

(2) "Physical agent modalities", as used in Subsection 58-42a-102(6)(b)(vii)(L), means specialized treatment procedures including: superficial thermal agents, deep thermal agents, electrotherapeutic agents, and mechanical devices.

(3) "Qualified continuing professional education", as used in Subsection 58-42a-303.5(1), means continuing education that meets the standards set forth in Subsection R156-42a-304.

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

(5) "Wound care", as used in Subsection 58-42a-102(6)(b)(vii)(L), means:

(a) prevention of interruptions in skin and tissue integrity; and

(b) care and management of interruptions in skin and tissue integrity.

R156-42a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 42a.

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

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

R156-42a-302b. Qualifications for Licensure - Education Requirements.

The education requirements for licensure, in accordance with Section 58-42a-302, are established as follows:

(1) An applicant for licensure as an occupational therapist shall graduate from an occupational therapy program accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education.

(2) An applicant for licensure as an occupational therapy assistant shall graduate from an occupational therapy assistant program accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education.

R156-42a-302d. Qualifications for Licensure - Examination Requirements.

The examination requirements for licensure, in accordance with Section 58-42a-302, are established as follows:

(1) An applicant for licensure as an occupational therapist shall pass the examination for certification from the National Board for Certification in Occupational Therapy as an occupational therapist registered.

(2) An applicant for licensure as an occupational therapy assistant shall hold current certification from the National Board for Certification in Occupational Therapy as a certified occupational therapy assistant.

R156-42a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 42a is established by rule in R156-1-308a.

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

R156-42a-304. Continuing Education.

(1) Continuing education required by Subsection 58-42a-302.5(1) shall consist of 24 hours of qualified continuing professional education in each preceding two-year period of licensure or prior to reinstatement of licensure. Each hour of continuing professional education may include a 10-minute break.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing professional education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(3) The required number of contact hours of continuing professional education for an individual who first becomes licensed during the two-year renewal cycle shall be decreased by a pro-rata amount.

(4) The standards for qualified continuing professional education include:

(a) an identifiable clear statement of purposed and defined objective for the educational program directly related to the practice of occupational therapy;

(b) relevance to the licensee's professional practice;

(c) presentation in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the continuing education;

(d) preparation and presentation by individuals who are qualified by education, training, and experience;

(e) completion of a minimum of two hours related to legal and ethical principles of practice; and

(f) verification from the continuing education provider to licensee of the completed continuing education.

(5) Supervision of one Level II occupational therapy student may account for two hours of continuing education, up to a maximum of eight hours of continuing education during each renewal cycle.

(6) Records of qualified continuing education completion shall be maintained by the licensee and reported to the Division when requested.

R156-42a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

(4) failing to cosign COTA discharge documentation within 30 days pursuant to R156-42a-601; and

(5) violating any provision of the American Occupational Therapy Association Code of Ethics, last amended 2015, which is hereby adopted and incorporated by reference.

R156-42a-601. Practice Standards.

(1) A certified occupational therapist assistant (COTA), after consultation with the supervising occupational therapist (OT), may discharge an individual from on-going service only if there is no evaluation component associated with the discharge from service. The supervising OT shall co-sign the appropriate documentation within 30 days.

(2) An occupational therapist shall complete formal specialized wound care training or certification, including didactic and clinical components, if engaging in the care and

management of interruptions in skin and tissue integrity.

(3) Occupational therapy treatment shall be performed by an occupational therapist or certified occupational therapist assistant who is able to demonstrate and document evidence of theoretical background, technical skill, and competence in the therapies performed.

KEY: licensing, occupational therapy
June 8, 2017 **58-1-106(1)(a)**
Notice of Continuation January 21, 2014 **58-1-202(1)(a)**
58-42a-101

R164. Commerce, Securities.
R164-9. Registration by Coordination.
R164-9-1. Registration by Coordination.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9, 61-1-11 and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by coordination in Utah. Any security for which a registration statement under the Securities Act of 1933 or a notification under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994), has been filed with the SEC in connection with the same offering may be registered by coordination under Section 61-1-9.

(3) The rule also authorizes optional electronic filing of registration statements and allows an optional modification of the term of effectiveness to facilitate simultaneous electronic filing.

(4) Offerings which are registered, as opposed to being exempt from registration, in less than 20 states, including the state of Utah, are subject to the requirements of Section R164-11-1. Failure to comply with the requirements of Section R164-11-1 may be grounds for denial, suspension or revocation of effectiveness of a registration statement filed under Section 61-1-9.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

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

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "Registration Statement" means the registration statement filed under the Securities Act of 1933 or the notification filed under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994).

(5) "SEC" means the United States Securities and Exchange Commission.

(6) "SRD" means the Securities Registration Depository, Inc.

(C) Registration requirements

(1) An issuer may register securities by submitting to the Division or its designee the following:

(1)(a) One original application on NASAA Form U-1 - Uniform Application to Register Securities;

(1)(b) One copy of the registration statement, including exhibits, together with all amendments as filed with the SEC under the Securities Act of 1933 or SEC Regulation A;

(1)(c) One original NASAA Form U-2 - Uniform Consent to Service of Process;

(1)(d) A fee as specified in the Division's fee schedule; and

(1)(e) Any additional documents or information which the Division requests.

(2) No document or application shall be deemed to be filed, and the 20 working day period referred to in Subsection 61-1-9(3)(b) shall not begin, until all items required by Subparagraph (C)(1) have been received by the Division or its designee.

(3) Where the Division notifies the registrant in writing of any missing or incomplete documents or information, or other deficiencies in the registration statement, registrant must respond promptly. If the registrant does not respond to the Division in writing within 30 calendar days of the mailing date of the Division's letter, the registration statement will be deemed incomplete and action may be taken to deny the effectiveness of the registration statement, and to impose a fine.

(D) Additional notification to the Division

The registrant shall notify the Division within two business days upon the receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court, concerning the securities covered by this application or other securities of the issuer currently being offered to the public.

(E) Effective date

(1) The registration statement becomes effective as set forth in Subsection 61-1-9(3).

(2) The registration statement is effective for one year from its effective date with the Division.

(3) A registration statement which does not become effective within one year from the filing date may be deemed materially incomplete and action may be taken to deny effectiveness to the registration statement.

(4) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(F) Post effective amendments

A registration statement may be amended by filing with the Division or its designee an amended NASAA Form U-1 - Uniform Application to Register Securities, and an amended registration statement. The amendment becomes effective when the Division so orders.

(G) Re-registration

The registrant may re-register securities, for which a registration statement is about to expire, by submitting to the Division or its designee, a NASAA Form U-1, an updated registration statement and the filing fee specified in the Division's fee schedule.

(H) Closing report

Within 30 days of the close of the offering or the expiration of the registration statement, whichever occurs first, the registrant shall file a closing report. The closing report must be filed on Division Form 9-1.

(I) Recognized designee

(1) The Division authorizes and recognizes the SRD as designee to receive filings under this rule on behalf of the Division, including but not limited to applications, registration statements and fees.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

R164-9-2. MJDS - Financial Statement Requirement.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9 and 61-1-24.

(2) This rule clarifies that financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, will be permitted in registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under MJDS.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Canadian generally accepted accounting principles

(1) Financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement filed with the Division under Section 61-1-9 and with the SEC under MJDS

on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC, and:

(1)(a) The securities which are the subject of a registration statement filed with the Division on SEC Form F-7 are offered for cash upon the exercise of rights granted to existing security holders.

(1)(b) The securities which are the subject of a registration statement filed with the Division on SEC Form F-8 are securities to be issued in an exchange offer, merger or other business combination.

(1)(c) The securities which are the subject of the registration statement filed with the Division on SEC Form F-9 are either non-convertible preferred stock or non-convertible debt which are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

(1)(d) The securities which are the subject of a registration statement filed with the Division on Form F-10 are offered and sold pursuant to a prospectus in which the SEC has not required reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(D) Preferred stock and certain debt securities

(1) For purposes of this rule, preferred stock and debt securities which are not convertible for at least one year from the date of effectiveness of the registration statement will be deemed to meet the requirement of Subparagraph (C)(1)(c).

R164-9-3b. MJDS - Review Period.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-9(6) and Section 61-1-24.

(2) This rule provides a shorter review period for registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under its multijurisdictional disclosure system.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Review period

(1) The 20 working day disclosure statement filing requirement set forth in Subsection 61-1-9(3)(b) shall be reduced to seven working days for a registration statement filed with the Division and with the SEC under MJDS on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC.

KEY: securities, securities regulation

February 2, 2010 **61-1-9**

Notice of Continuation June 2, 2017 **61-1-11**

61-1-24

R164. Commerce, Securities.
R164-10. Registration by Qualification.
R164-10-2. Registration Statements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-10, 61-1-11, and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by qualification in Utah. It is available for registration of securities by any person who proposes to issue or sell any security.

(3) This rule requires that the registration statement must contain certain information. The issuer, issuer-agent and broker-dealer should be aware that information not specifically required by this rule or by the Division prior to effectiveness may be necessary to be included so as to meet the disclosure requirements of Section 61-1-1. Review of the registration statement by the Division does not imply that the disclosure requirements of Section 61-1-1 have been met.

(4) Section 61-1-12 enables the Director of the Division to deny effectiveness to, or revoke or suspend effectiveness of, any securities registration statement, and to impose a fine. Applicant should be aware that criteria contained in Section 61-1-12 will be applied in addition to the requirements of this rule.

(5) This rule requires that certain actions be taken by the issuer after the effective date of the registration statement. See paragraph (C) of this rule. Effectiveness of the registration statement may be suspended or revoked, and a fine imposed, for failure to comply with these requirements.

(6) Section 61-1-16 prohibits the filing of false or misleading documents with the Division. Documents and information filed with the Division should be closely scrutinized prior to signing and filing to insure their accuracy.

(7) Any security may be registered by qualification.

(8) Qualifying companies may utilize NASAA Form U-7 to satisfy the prospectus information requirements set forth in subparagraphs (E)(1) and (E)(2) this rule.

(B) Definitions used in this rule

(1) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(1)(a) planned principal operations have not commenced; or

(1)(b) planned principal operations have commenced, but there has been no significant revenue therefrom.

(2) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Expert" means any person referred to in Subsection 61-1-10(2)(o), whose opinion, appraisal, report, name or similar information, is used in the registration statement or provides information which is used in the registration statement.

(5) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity or partners' capital, and appropriate notes to the financial statements.

(6) "NASAA" means the North American Securities Administrators Association, Inc.

(7) "SEC" means the United States Securities and Exchange Commission.

(C) Registration requirements

(1) The issuer must file with the Division the documents and information required by paragraphs (C) and (D) of this rule, and pay a fee as specified in the Division's fee schedule.

(2) The registration statement must

(2)(a) contain the documents required by paragraph (D) of this rule,

(2)(b) comply with the merit requirements of paragraph (G) of this rule,

(2)(c) comply with the requirements of Section R164-11-1,

(2)(d) comply with the fund impound requirements of Section R164-11-7b, and

(2)(e) comply with the sales commission requirements of Section R164-12-1f.

(3) Within ten working days after the effective date of the registration statement, issuer must file with the Division two copies of the final prospectus.

(4) Within ten working days after the expiration of the effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a completed and executed closing report on Division Form 10-2-1A.

(5) Within ten working days after the expiration of effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a list of persons who have purchased or subscribed to the offering, including the residential address of each purchaser, the dates of and amount of securities purchased or subscribed to, and the consideration paid by each purchaser or subscriber.

(6) Subsequent to the filing date of the registration statement, issuer must file with the Division financial statements which meet the requirements of paragraph (H) of this rule.

(7) Where the Division has notified issuer in writing of any missing or incomplete documents, deficiencies in the registration statement, or changes required in the prospectus, issuer must respond promptly. If issuer does not respond to the Division's deficiency letter within 30 calendar days of the mailing date of its deficiency letter, the registration statement may be deemed incomplete and appropriate action may be taken to deny effectiveness to the registration statement, and to impose a fine.

(D) Documents to be filed with the Division

The registration statement must contain the following:

(1) One original Division Form 10-2-1 which has been manually executed by all officers, directors, or partners;

(2) One original Division Form 10-2-1B certification for each officer, director, promoter, holder of 10% of the outstanding stock, broker-dealer or issuer-agent, and attorney;

(3) One original NASAA Form U-2, Uniform Consent to Service of Process, which is available from NASAA or the Division, appointing the Director, Utah Division of Securities as issuer's agent for service;

(4) Two copies of the preliminary prospectus containing the information required by paragraph (E) of this rule;

(5) Two copies of financial statements conforming to the requirements of paragraph (F) of this rule;

(6) One original opinion of counsel as required by Subsection 61-1-10(2)(n);

(7) One original NASAA Form U-2A, Uniform Corporate Resolution, which is available from NASAA or the Division, of the issuer where the registration statement is filed by or on behalf of a person other than an individual;

(8) One copy of the organizational documents as required by paragraph (I) of this rule;

(9) One copy of the subscription agreement, if any, to be used in connection with the offering;

(10) One original specimen security as required by paragraph (J) of this rule;

(11) One copy of the executed selling documents as required by paragraph (K) of this rule;

(12) One original of completed and executed documents required by Section R164-11-7b;

(13) One copy of any order, judgment or decree described

in subparagraph (E)(2)(d)(ix) of this rule;

(14) At the time of filing the registration statement or not less than five days prior to use, one copy of any item, other than the prospectus, intended to be used to advertise or solicit interest in the offering; except no filing shall be required for notices and advertisements used after the effective date of a registration statement which contains only statements allowed by SEC Rule 134, Communications Not Deemed a Prospectus, 17 CFR 230.134, 1993, which is adopted and incorporated by reference and available from the SEC or the Division;

(15) Original written consents as required by paragraph (L) of this rule;

(16) One copy of each material contract or agreement with an affiliate of the issuer and one copy of any other material contract;

(17) One original of documents supporting the value of assets as shown on the financial statements such as appraisals, assays, reserve reports, engineer reports and similar expert evaluations as discussed in the prospectus; and

(18) Other material documents or information as requested by the Division. The provisions of subparagraph (C)(7) of this rule apply to such requests.

(E) Prospectus information requirements

The prospectus must contain at least the following information:

(1) Facing pages

(1)(a) Title of document;

(1)(b) Number and class of shares or units offered;

(1)(c) Par or stated value;

(1)(d) Entity description, including:

(1)(d)(i) name,

(1)(d)(ii) address,

(1)(d)(iii) type,

(1)(d)(iv) state and date of incorporation or organization;

(1)(e) Statement as to whether or not a public market exists or will exist;

(1)(f) Statement as to how the securities are registered or exempt at both the federal and state level;

(1)(g) Statement that registration with the Division is neither a recommendation or endorsement of any security, individual, firm or corporation;

(1)(h) Statement as to whom offering is made;

(1)(i) In chart form, including:

(1)(i)(i) shares or units offered,

(1)(i)(ii) price per share,

(1)(i)(iii) commissions,

(1)(i)(iv) net proceeds to the issuer, and

(1)(i)(v) minimums and maximums sought;

(1)(j) Footnotes including:

(1)(j)(i) consideration sought,

(1)(j)(ii) manner of offering,

(1)(j)(iii) amount and type of sales commissions to be paid, and

(1)(j)(iv) the maximum amount of offering expenses;

(1)(k) Broker-dealer or agent name, address, and telephone number;

(1)(l) Statement that no person is authorized to make any statements not contained in the disclosure document and that practices to the contrary may be a criminal offense;

(1)(m) Effective date of the prospectus.

(2) Subsequent pages

(2)(a) The issuer:

(2)(a)(i) history,

(2)(a)(ii) purpose,

(2)(a)(iii) intentions,

(2)(a)(iv) predecessors;

(2)(b) Risk factors;

(2)(c) Conflicts of interest;

(2)(d) With respect to every director and officer of the issuer, the following information:

(2)(d)(i) Name, age, residential address;

(2)(d)(ii) Occupation and business experience during the past five years;

(2)(d)(iii) The number of shares or partnership interests of the issuer owned as of a specified date within 30 days of the filing of the registration statement, the approximate date of purchase and the consideration paid for those shares or interests;

(2)(d)(iv) The amount of the securities covered by the registration statement to which an intention to subscribe has been indicated;

(2)(d)(v) Any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(2)(d)(vi) Any family relationship between any director or officer;

(2)(d)(vii) Any other director or officer or similar position held in any other non-public company;

(2)(d)(viii) Any previous involvement in a public company as an officer, director or promoter, including a complete description of the company and affiliation with the company, the dates of and amounts raised in public offerings of the company and, if the company has undergone a reorganization, merger or an acquisition of assets in which an amount of stock representing more than 50% of the company's outstanding stock was issued, the consideration per share received by the company and the book value per share of the company immediately before and after the reorganization, merger or acquisition of assets;

(2)(d)(ix) Involvement in any material legal proceeding;

(2)(d)(x) Any remuneration paid directly or indirectly by the issuer, its predecessors, parents, or subsidiaries, during the past twelve months and estimated to be paid during the succeeding twelve months;

(2)(e) With respect to any person owning of record, or beneficially, 10% of the outstanding shares of any class of equity security of the issuer, the same information specified in subparagraphs (E)(2)(d)(i) and (iii)-(x) of this rule.

(2)(f) With respect to every promoter, if the issuer was organized within the past three years, the same information as specified in subparagraph (E)(2)(d) of this rule and any amount paid by the issuer within the past three years as well as the consideration given for such payments.

(2)(g) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution the following information:

(2)(g)(i) The information required in subparagraph (E)(2)(d)(i) of this rule;

(2)(g)(ii) The amount of securities of the issuer held as of the date the registration statement was filed with the Division;

(2)(g)(iii) The information required in subparagraph (E)(2)(d)(v) of this rule;

(2)(g)(iv) Statement of reasons for making the offering.

(2)(h) Dilution, share ownership and capital contributions: narrative discussion and graphic or tabular illustration, such as bar graphs or pie charts;

(2)(i) Fund impound:

(2)(i)(i) amount,

(2)(i)(ii) duration,

(2)(i)(iii) location, and

(2)(i)(iv) statement that funds will be released only upon order of the Division;

(2)(j) Material litigation which affects the offering;

(2)(k) Summary of the Opinion of Counsel required by Subsection 61-1-10(2)(n);

(2)(l) The substance of reports, findings, appraisals and valuations provided by persons who are named as having prepared or certified such reports or valuations pursuant to Subsection 61-1-10(2)(o);

(2)(m) With respect to Limited Partnerships, net worth of each individual general partner exclusive of home, automobile and home furnishings or, in the alternative, a representation that the general partner meets the net worth requirements of subparagraph (G)(3)(b)(iii) of this rule;

(2)(n) Definition section, where material;

(2)(o) Substance of material contracts and agreements;

(2)(p) The amount of shares subject to transferability restrictions, contractual or otherwise, and the nature of said restriction;

(2)(q) Statement as to the issuer's fiscal year-end date;

(2)(r) Financial statements as required by this rule;

(2)(s) Statement of the intended use of proceeds of the offering as required by Subsection 61-1-10(2)(i);

(2)(t) Transfer agent's name and street address;

(2)(u) Statement that any and all amendments to the prospectus will be promptly filed with the Division, distributed to purchasers in the offering, and made a part of any prospectus used thereafter;

(2)(v) Statement that the Division, market makers, and security holders will be promptly notified in writing of any change in the management, purpose, and control of the issuer, or any material or adverse condition affecting the issuer.

(3) Small Company Offering Registration (SCOR)

(3)(a) A company issuing securities exempt from federal registration under Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933, may utilize the NASAA Form U-7, which is available from NASAA or the Division, as the prospectus for the offering to satisfy subparagraph (D)(4) of this rule, provided that the issuer:

(3)(a)(i) complies with each of the requirements set forth in Part I(1) of the NASAA SCOR Issuer's Manual;

(3)(a)(ii) complies with all conditions set forth in, and provides all information required by Part I(2) of the NASAA SCOR Issuer's Manual; and,

(3)(a)(iii) in all material respects complies with all other requirements of this rule.

(3)(b) The filing of one original NASAA Form U-1, Uniform Application to Register Securities, which has been manually executed by all officers and directors of the issuer, satisfies subparagraph (D)(1).

(F) Financial statements

The financial statements contained in the registration statement and the prospectus must meet the requirements of this paragraph (F).

(1) Financial statements of the issuer, or the issuer and its predecessors or any business to which the issuer is a successor, which are to be filed as part of the registration statement must be prepared in accordance with generally accepted accounting principles (GAAP).

(2) Audited financial statements required herein must be accompanied by an unqualified opinion report by an independent certified public accountant.

(3) Consolidated financial statements must be prepared for an issuer that has majority-owned subsidiaries.

(4) The Division may permit the omission of one or more of the financial statements required under this rule and in substitution thereof permit appropriate comparable financial statements, upon the written request of issuer and where consistent with the protection of Utah investors.

(5) The Division may require the filing of other financial statements in addition to or in substitution for the financial statements herein required where such financial statements are necessary or appropriate for an adequate presentation of the issuer's financial condition or the financial condition of any person considered necessary, where consistent with the protection of Utah investors.

(6) Issuer must file audited financial statements for the most recent fiscal year, or as of a date within four months of the date the registration statement is filed with the Division if the issuer, including predecessors, has existed for a period of less than one fiscal year.

(7) When the filing date of the registration statement falls after a date four months subsequent to the issuer's most recent fiscal year end, unaudited interim financial statements dated within four months of the filing date must also be included in the registration statement.

(8) Unaudited financial statements must be filed for the two fiscal years preceding the most recent fiscal year or for such shorter period as the issuer and any predecessors have been in existence if less than three years.

(9) If the financial statements required herein are as of a date more than four months prior to the date that the registration statement is expected to become effective, the financial statements must be updated as of a date within four months of the expected effective date and include the entire period since the last fiscal year end. Such interim financial statements need not be audited.

(10) If any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements shall be required of that business as if it were the issuer.

(11) An issuer which is a limited partnership shall also be required to file the balance sheets of the general partners as described below.

(11)(a) Where a general partner of the limited partnership is a corporation there must be filed an audited balance sheet of such corporation as of the end of its most recently completed fiscal year.

(11)(b) Where a general partner of the limited partnership is a partnership there must be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(11)(c) Where a general partner of the limited partnership is a natural person there must be filed, only as supplemental information, an unaudited balance sheet of such natural person as of a date no more than four months prior to the date the registration statement was filed.

(G) Merit requirements

(1) Minimum offering amount for a development stage company

(1)(a) The minimum offering amount for a development stage company shall not be less than an amount such that immediately following the close of the offering the net tangible asset value of the company is equal to or greater than $75,000, based on the net tangible asset value of the most recent balance sheet included in the prospectus as adjusted to give effect to the minimum net proceeds of the offering and, at the discretion of the Division, any value not recognized for financial statement purposes as supported by independent appraisal or other recognized authority.

(2) Dilution

(2)(a) The maximum dilution to the net tangible asset value of the securities offered in a public offering pursuant to Section 61-1-10 shall not exceed 33 1/3% of the public offering price for a development stage company or 50% for all other companies.

(2)(b) This subparagraph (G)(2) of this rule shall apply to all offerings of preferred or common corporate stock.

(2)(c) Dilution shall be equal to the difference between the offering price of the shares and the net tangible asset value per share based on the most recent balance sheet included in the prospectus as adjusted to give effect to the maximum net proceeds of the offering. The net tangible asset value of the shares at the close of the offering shall be determined by dividing the net tangible asset value of the corporation by the total number of shares outstanding at the close of the offering. The net tangible asset value of the corporation shall be equal to

the total assets of the corporation less the intangible assets and the liabilities of the corporation.

(2)(d) In the event that not all shares offered are sold, the shareholders, other than those purchasing in the offering, shall be required to contribute to the company a sufficient number of shares or tangible assets so that dilution, based on the most recent balance sheet included in the prospectus and receipt of the net proceeds from the shares actually sold, does not exceed the maximum dilution allowed.

(2)(e) Registration will not be permitted to close, and will not be issued a closing letter, where the dilution at the close of the offering is greater than the maximum dilution allowed and such violation has not been remedied.

(3) Equity

(3)(a) Corporate Equity and Debt Offering.

(3)(a)(i) Prior to and during the effectiveness of a registration statement pertaining to an offering of securities which are corporate equity securities, rights to obtain corporate equity securities, securities convertible into corporate equity securities, or corporate debt securities, the corporation must have equity equal to at least 10% of the maximum aggregate offering price of the securities which are registered or to be registered. Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash, and retained earnings. Retained deficits will not reduce the equity of the corporation for purposes of this subparagraph (G)(3)(a) of this rule. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph (G)(3)(a) of this rule.

(3)(a)(ii) Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the issuer, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(3)(b) Limited Partnership and Trust Certificate Offering. Prior to the effectiveness of a registration statement relating to limited partnership units, issuer must meet one of the following requirements:

(3)(b)(i) The general partner, promoter, or manager has paid, in cash, at least an amount equal to 5% of the maximum aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer;

(3)(b)(ii) The general partner, promoter, or manager has the ability to pay and commit themselves to pay, in cash, 5% of the maximum aggregate offering price of the securities to be registered into the fund impound prior to the release of the impound and in addition to any other impound which may be required by the rules of the Division; or,

(3)(b)(iii) The general partner, promoter, or manager has an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to 10% of the maximum aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

(4) Offering Expenses

The maximum offering expenses, not including commissions on the sales of the securities, which shall be paid from the proceeds of the public offering or by the issuer in connection with the public offering is the greater of $6,000 or 8% of the minimum aggregate offering price of the securities registered.

(H) Post filing financial statement requirements

(1) The financial statements required by this paragraph (H) of this rule must be prepared in accordance with the requirements set forth in paragraph (F) of this rule.

(2) Subsequent to the filing date of a registration statement, the following financial statements must be filed:

(2)(a) After the end of each fiscal year, through and including the year in which 80% of the offering proceeds will have been used, audited financial statements for the previous fiscal year must be filed with the Division within 90 days after the end of the applicant fiscal year.

(2)(b) If an effective registered offering has not been completely sold at a date six months after the end of the issuer's last fiscal year, unaudited interim financial statements must be filed with the Division within 30 days of that date for the period ending six months from the fiscal year end. Financial statements required by this subparagraph (H)(2) of this rule shall not be required where interim financial statements are filed pursuant to the requirements in paragraph (F) of this rule which cover at least the same period covered by this subparagraph (H)(2).

(3) If an effective registered offering has not been completely sold, the financial statements required by this paragraph (H) of this rule must be appended to every prospectus used thereafter.

(I) Organizational documents

(1) Corporation. A registration statement for the proposed sale of securities of a corporation must contain:

(1)(a) one copy of the certificate and articles of incorporation and all amendments thereto; and

(1)(b) By-laws.

(2) Limited Partnership. A registration statement for the proposed sale of securities of a limited partnership must contain:

(2)(a) one copy of the limited partnership agreement, and

(2)(b) the documentation of the managing general partner which would be required by this paragraph (I) of this rule if the managing general partner was the issuer of the securities.

(3) Others. As the Division specifies in each instance.

(J) Specimen Security

The registration statement must contain either:

(1) An original specimen security which conforms to the description of the security in the registration statement; or

(2)(a) A letter, signed by a director of the issuer, or a person of similar responsibility for an unincorporated issuer, stating that a specimen security meeting the requirements of subparagraph (J)(1) of this rule will be delivered prior to the release of impounded funds, and

(2)(b) A notation on Item 12 of Division Form 11-7B that it shall be a condition of release of such impounded funds for the issuer to provide a specimen security meeting the requirements of subparagraph (J)(1) of this rule.

(K) Selling documents

The registration statement must contain the following documents with respect to the persons who propose to offer or sell the securities pursuant to the registration statement:

(1) Where the securities are to be offered through a licensed agent or broker-dealer, one copy of the signed agreement between the agent OR broker-dealer and the issuer setting forth the compensation each person will receive in connection with such distribution, and a description of any transactions between such person and the issuer within the twelve months preceding the filing of the registration statement.

(2) Where the securities are to be offered through any person not licensed with the Division as a broker-dealer or agent, the broker-dealer or agent application and supporting documents and information, as required in Section R164-4-1, for such person must accompany the registration statement at the time of the original filing.

(3) No registration statement shall become effective where

(3)(a) the only person participating in the distribution is a broker-dealer which is a member of FINRA, and

(3)(b) the Division has not received written confirmation or oral confirmation to be followed by written confirmation that FINRA has no objection to the compensation arrangements set forth in the registration statement.

(4) No registration statement shall be effective or become effective without complete compliance with Section R164-4-1 by at least one person participating in the distribution.

(L) Consent of expert

(1) Where any information provided by an expert is used in the registration statement or prospectus, the registration statement must include the consent of the expert to the specific use of the information in the prospectus or registration statement.

(2) Where the name of an expert is used in the registration statement or prospectus, the registration statement or prospectus must contain the consent of the expert as to the specific use of the expert's name.

(M) Amendments

(1) Whenever there is a material change in any information or document filed with the Division, the issuer must file a correcting amendment with the Division within ten working days after the material change.

(2) There is no charge for filing a correcting amendment.

KEY: financial statements, securities, securities regulation
February 2, 2010 61-1-10
Notice of Continuation June 2, 2017 61-1-24

R164. Commerce, Securities.
R164-11. Registration Statement.
R164-11-1. General Registration Provisions.

A. Preliminary Notes

(1) This R164-11-1 applies to public offerings registered by coordination or qualification pursuant to Sections 9 or 10 of the Utah Uniform Securities Act (the "Act"), except this rule shall not apply to offerings which are registered in twenty or more states, including the state of Utah.

(2) The purpose of the rule is to ensure full disclosure of material information, prohibit offerings which tend to work a fraud on purchasers and prohibit unreasonable amounts of promoters' profits.

(3) Failure to comply with the provisions of this rule shall be grounds for denial, suspension or revocation of the effectiveness of a registration statement.

(4) For purposes of this rule "development stage companies" shall mean those companies that devote substantially all of their efforts to acquiring or establishing a new business and in which either: 1) planned principal operations have not commenced or 2) there have been no significant revenues therefrom.

(5) Selected requirements of this rule may be waived by the Utah Securities Division ("Division") where an applicant makes a specific request for a waiver and the Division finds that such requirement(s) is/are not necessary or appropriate for the protection of investors.

(6) This rule applies to all registration statements filed on or after February 15, 1986.

B. NASAA Statements of Policy

All registration statements for oil and gas programs, church bonds, real estate investment trusts, publicly-offered cattle-feeding programs, real estate programs and equipment programs must satisfy the provisions of the appropriate statements of policy adopted by the North American Securities Administrators Association ("NASAA").

Offerings which are required under this paragraph B to satisfy, and do satisfy, the provisions of a NASAA statement of policy shall not be required to satisfy the provisions of paragraphs C and D of this R164-11-1.

C. Promoters' Investment in Development Stage Companies

An investment by promoters and shareholders in a development stage company shall be required as follows:

(1) Corporate Equity and Debt Offerings.

Prior to and during the effectiveness of a registration statement, where the registrant is the issuer, pertaining to an offering of securities which are corporate equity securities, which are securities convertible into corporate equity securities or which are corporate debt securities, the corporation shall have equity equal to at least the lesser of: 1) ten percent (10%) of the aggregate offering price of the securities which are registered or to be registered or 2) fifty thousand dollars ($50,000). Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash and retained earnings. Retained deficits will not reduce the equity of the company for purposes of this subparagraph. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph.

NOTE: Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the registrant, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(2) Partnership and Trust Certificate Offerings.

Prior to the effectiveness of a registration statement relating to partnership units, the registrant shall meet one of the following requirements:

(a) The general partner(s), promoter(s), and/or manager(s) have paid, in cash, at least an amount equal to five percent (5%) of the aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer; or

(b) The general partner(s), promoter(s), and/or manager(s) have the ability to pay and commit themselves to pay, in cash, the lesser of: 1) five percent (5%) of the aggregate offering price of the securities to be registered or 2) fifty thousand dollars ($50,000); or

(c) The general partner(s), promoter(s), and/or manager(s) have an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to ten percent (10%) of the aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

D. Business Plan and Use of Proceeds for Development State Companies

In a development stage company the business plan and the use of offering proceeds must be disclosed with specificity in the offering prospectus.

Where eighty percent (80%) or more of the net offering proceeds (total offering proceeds less offering expenses and commissions) is not specifically allocated for the purchase, construction or development of identified properties or products, discharge of indebtedness, payment of overhead, etc., the registrant shall comply with the following provisions:

(1) Eighty percent (80%) of the net offering proceeds shall be escrowed in a manner approved by the Division. The escrow shall continue until the registrant can specifically allocate the use of the proceeds, at which time the registrant shall amend or supplement the registration statement to disclose all material information concerning the proposed use of proceeds. Such disclosure shall be in the same form and quality as required in a registration statement.

(2) At the time of the amendment or supplement to the registration statement, the investors in the offering must be given no less than twenty (20) days to ratify or rescind his/her investments. Investors who choose to rescind his/her investments shall receive a pro rata refund of all offering proceeds. However, should enough investors request a refund such that the net tangible asset value of the company after the refund would be less than seventy-five thousand dollars ($75,000) the registrant shall make a pro rata refund of all unused offering proceeds to investors.

(3) The registrant shall not issue stock, deliver stock certificates or allow secondary trading of the stock until the offering proceeds have been released to the registrant.

E. Employment of Agents by Issuers

An issuer shall not employ agents to sell securities which are the subject of the registration statement until: 1) such agent is registered with the Division as an agent of the issuer; and 2) the issuer has filed with the Division a surety bond in the amount of twenty-five thousand dollars ($25,000) conditioned on the agents compliance with the Utah Uniform Securities Act and the rules of the Securities Division of the Utah Department of Commerce and covering the effective period of the issuer's registration statement.

R164-11-2. Hearings for Certain Exchanges of Securities.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-11.1 and 61-1-24.

(2) This rule sets forth the procedure and requirements to

be met when seeking a fairness hearing for certain exchanges of securities.

(3) A finding of fairness under Section 61-1-11.1 does not constitute a registration or exemption except as provided by Paragraph (H).

(B) Definitions.

(1) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

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

(3) "Interested person" means any officer, director or security holder of either party involved in the transaction, or any other person as the Division may permit.

(C) Parties.

The Division will only consider an application under Section 61-1-11.1 for a transaction where:

(1) Either party to the transaction is a domestic business entity formed, organized or incorporated under the laws of Utah;

(2) Either party to the transaction is a business entity whose headquarters or principal place of business is located in Utah; or

(3) Thirty percent (30 %) or more of the persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1) are persons who are Utah residents.

(D) Application Requirements.

An application may be made to the Division under Subsections 61-1-11.1(1) and 61-1-11.1(5) by filing with the Division:

(1) Division Form 11--Application for Hearing for Certain Exchanges of Securities;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) A fee as specified in the Division's fee schedule; and

(4) Other documents as the Division may request.

(E) Notice.

(1) At least twenty (20) calendar days prior to the hearing, the applicant must provide written notice of the hearing, as approved by the Division, to any person to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1). Such notice shall be effective pursuant to Subsection 16-10a-103(5). Such notice period may be waived upon the demonstration of good cause by the applicant.

(2) The notice must contain the following information:

(a) A brief statement of the facts that give rise to the hearing, including an outline of the terms and conditions of the proposed transaction;

(b) A statement of the issues to be considered at the hearing, together with the relevant statutes and rules;

(c) The time and place of the hearing as specified by the Division;

(d) The procedures for participating in the hearing by telephone or affidavit as approved by the Division; and

(E) Any other information requested by the Division.

(3) Prior to or at the hearing, the applicant must file an affidavit with the Division stating that a notice has been sent, in compliance with Subparagraphs (E)(1) and (E)(2), to all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1), including a description of how and when the notice was sent.

(F) Hearing.

(1) Within a reasonable time after the receipt of an application meeting the requirements of Section 61-1-11.1 and this rule, the Division may schedule a hearing to be conducted under Subsection 61-1-11.1(2).

(2) A hearing under Section 61-1-11.1 shall be conducted by a hearing officer designated by the Director.

(3) Any interested person may attend a hearing under Section 61-1-11.1.

(4) Any interested person may participate in the hearing by giving written notice to the Division at least two (2) days prior to the hearing, indicating such person's intention to appear and participate in the hearing. Interested persons may participate:

(a) In person;

(b) By telephone; or

(c) By affidavit.

(5) The hearing shall be recorded electronically and transcribed by the Division. The transcription costs will be assessed to the Applicant. Upon request, the Division will hire a court reporter at the requester's expense.

(G) Findings and Order.

Within a reasonable time after completion of the hearing, the Director shall issue an order pursuant to Subsection 61-1-11.1(3).

(H) Exemptions.

The Issuer may request that the Division determine that the transaction is exempt from registration under Subsection 61-1-14(2)(s).

R164-11-7b. Fund Impound.

A. Preliminary Notes

(1) R164-11-7b applies only to public offerings which are registered by qualification pursuant to Section 10 of the Utah Uniform Securities Act (the "Act") and the rules thereunder.

(2) This R164-11-7b and R164-10-2 both require certain documents to be filed and provide that failure to comply with these requirements is cause for denial, suspension or revocation of the effectiveness of a registration statement.

(3) This rule R164-11-7b is a statement of what has been the position of the Utah Securities Division (the "Division") in the past under Rule A67-03-12 and applies to all registration statements which become effective on or after May 10, 1983.

B. Term of Impound

(1) The applicant for registration by qualification under Section 10 of the Act and the rules thereunder may choose a term of not less than one month and not more than one year from the effective date of the registration statement.

(2) The term of the impound shall be expressed by the number of months and shall not be expressed by the number of days.

C. Amount to be Impounded

(1) The amount to be impounded shall be the greater of:

(a) Twenty-five percent of the aggregate offering price of the securities to be registered plus offering expenses; OR

(b) The minimum amount required to sustain the business proposed by the registrant for one full year from the release of the impound; OR

(c) The minimum amount proposed to be sold by the applicant pursuant to the registration statement.

D. Where Funds are to be Impounded

Funds may be impounded at any federal or state bank or savings institution.

E. Conditions of Impound

(1) The applicant shall file a completed FORM 11-7b with the Division as part of the registration statement.

(2) The conditions of impound are stated on FORM 11-7b and are herein incorporated as requirements of this R164-11-7b.

F. Release of Impounded Funds

(1) The impounded funds shall be released only by an ORDER OF THE DIVISION.

(2) The impounded funds shall be released to the registrant where:

(a) All registration requirements which, pursuant to the rules of the Division needed to be met by such date, have been met;

(b) The registrant requests the release in writing; and

(c) The Division receives written confirmation from the

financial institution impounding the funds of the amount which has been deposited into the impound.

G. Certain Registrants

Where the registrant in a registration by qualification is a security holder who is not conducting a public offering for or on behalf of the issuer of the securities which are to be sold in the offering, no fund impound is required by this R164-11-7b; provided, however, that where an offering has a "minimum" required to be sold in order to consummate the transaction, a fund impound is required.

KEY: securities regulation
February 2, 2010 61-1-11(7)(b)
Notice of Continuation June 2, 2017

R164. Commerce, Securities.
R164-12. Sales Commission.
R164-12-1f. Commissions on Sales of Securities.

A. Preliminary Notes

(1) This R164-12-1f regulates the compensation which may be received by any person in connection with a public offering of securities pursuant to a registration by qualification under Section 10 of the Utah Uniform Securities Act (the "Act"). The Rule does not effect offerings which are registered by coordination or offerings which are sold pursuant to an exemption from the Act.

(2) This R164-12-1f does not effect the requirements of the Act and the rules thereunder as to registration, supervision and termination of agents.

(3) This R164-12-1f is an extended version of the standards that the Utah Securities Division (the "Division") has in the past required to be met. The standards herein are based upon reasonableness, the NASAA guidelines as to options and warrants issued to underwriters, and FINRA's interpretations of fair compensation. The percentage of cash commissions that is permitted under this R164-12-1f is unchanged from the former Rule A67-03-12.

B. Persons Subject to this Rule

(1) This R164-12-1f regulates compensation to participants in a distribution of securities which are registered by qualification pursuant to Section 10 of the Act and the rules and regulations thereunder.

(2) No registrant, affiliate of a registrant, or person acting on behalf of a registrant in connection with a public offering registered pursuant to Section 10 of the Act may give, directly or indirectly, compensation which is in violation of this R164-12-1f.

(3) No agent, underwriter or affiliate of an agent or underwriter may receive, directly or indirectly in connection with a public offering registered pursuant to Section 10 of the Act, compensation which is in violation of this R164-12-1f.

C. Definitions

As used in this R164-12-1f, the following terms shall have the indicated meanings:

(1) "Compensation" includes all cash; the value of all options, warrants, rights and other securities; the gross amount of the underwriter's discount; total expenses payable by the issuer, whether accountable or non-accountable, to or on behalf of the participant in the distribution which would normally be paid by the participant in the distribution; counsel's fees and expenses of the participant in the distribution payable by the issuer; finder's fees; financial consulting and advisory fees; and the value of all contracts and agreements with respect to the issuer or its affiliates which are connected with the distribution or with the negotiation of compensation in the distribution.

(2) "Corporate equity security" means any security which presently represents an ownership interest in a corporate entity and which includes common stock and preferred stock but does not include a security which is not presently, but is at some future time convertible into, a corporate equity security.

(3) "Participant in the distribution" means any person offering, selling, delivering, distributing, soliciting interest in or otherwise involved in the distribution, offer or sale of securities to the public or to any member of the public and includes persons commonly known as underwriters, agents and finders.

D. Maximum Compensation

(1) Distributions of Corporate Equity Securities: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of corporate equity securities is an amount equal to 15% of that portion of the public offering price of the securities being distributed which is actually received by or on behalf of the registrant; provided, however, that any securities issued in connection with such distribution comply with paragraph F of this R164-12-1f.

(2) All Other Distributions: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of securities other than corporate equity securities shall be 20% of that portion of the public offering price of the securities being sold which is actually received by or on behalf of the registrant; provided, however, that any securities issued also comply with paragraph F of this R164-12-1f.

E. Determination of Amount Received by or on Behalf of the Registrant

The amount of the public offering price which is actually received shall be determined as follows:

(1) The following shall be included:

(a) Cash received;

(b) Fair market value of any securities received; and

(c) Fair market value of any tangible property received excluding items listed in subparagraph E(2) of this R164-12-1f.

(2) The following shall be excluded:

(a) Promissory notes or similar promises to provide cash or property in the future;

(b) Assessments, whether conditional or obligatory; and

(c) Intangible property such as patents, royalties, etc.

F. Securities Issued to Participants in a Distribution

(1) Options or Warrants:

Options or warrants issued to participants in a distribution must be justified by the applicant. Options or warrants will be considered justified if all of the conditions of this paragraph F are met.

(a) The options or warrants are issued only to a broker-dealer registered with this Division and are not transferable except in cases where the broker-dealer is a partnership and then only within the partnership.

(b) The number of shares covered by all options or warrants does not exceed ten percent of the shares to be outstanding upon completion of the offering.

(c) The options or warrants do not exceed five years in duration and are exercisable no sooner than one year after issuance.

(d) The initial exercise price of the options or warrants is at least equal to the public offering price plus a step-up of said public offering price of either seven per cent each year they are outstanding, so that the exercise price throughout the second year is one hundred seven per cent, throughout the third year one hundred fourteen per cent, throughout the fourth year one hundred twenty-one per cent, throughout the fifth year one hundred twenty-eight per cent; or in the alternative, twenty per cent at any time after one year from the date of issuance; provided that an election as to either alternative must be made by the broker-dealer at the time that the options or warrants are issued.

(e) The options or warrants are issued by a relatively small company, which is in the promotional stage, or which, because of its size, lacks public ownership of its shares, or other facts and circumstances make it appear that the issuance of options is necessary to obtain competent investment banking services.

(f) The prospectus used in connection with the offering fully discloses the terms and the reason for the issuance of such options or warrants; provided that if such reason relates to future advisory services to be performed by the broker-dealer without compensation in consideration for the issuance of such options or warrants, a statement to that effect is placed in the prospectus.

(g) The total amount of options and warrants issued or reserved for issuance at the date of the public offering shall be reasonable. The amount of options and warrants shall be presumed reasonable if the number of shares represented by such options and warrants does not exceed a number equal to ten per cent of the number of shares outstanding during the period the registration is in effect. The number of options and warrants reserved for issuance may be disregarded if the issuer

files an undertaking or states in the prospectus that the amount of outstanding options and warrants shall not exceed the above limitation during the period the registration is in effect.

(2) The value of any securities received, which value shall be included in determining the amount of compensation for the purposes of paragraph D of this R164-12-1f shall be as follows:

(a) Options/Warrants: The market value of such options or warrants, if any, shall be used. In cases where no market value exists, a presumed fair value of twenty per cent of the public offering price of the shares to which the options or warrants pertain shall be used, unless evidence indicates that a contrary valuation exists.

(b) Stock: The amount of compensation received when stock is issued shall be the difference between the cost of such stock and the proposed public offering price or, in the case of securities with a bona fide independent market, the cost of such stock and price of the stock on the market on the date of purchase. If, however, there is a binding obligation to hold such stock for a substantial period of time, an adjustment in such valuation may be made.

(c) Convertible Securities: The amount of compensation received when convertible securities are issued shall be the difference between the conversion price and the proposed public offering price or, in the case of securities with a bona fide independent market, the conversion price and the price of the stock on the market on the date of purchase.

(3) Equity Securities Issued to Participants in a Distribution:

Equity securities or securities convertible into equity securities, when combined with securities issued pursuant to subsection (F)(1) of this Rule, acquired by a participant in a distribution, whether acquired prior to, at the time of, or after, but which are determined to be in connection with or related to, the offering shall not in the aggregate be more than ten percent of the total number of units being offered in the proposed offering. The maximum limitation in the case of "best efforts" underwritings or participations shall be on the basis of no more than one unit received for every ten units actually sold. For the purposes of this paragraph:

(a) No securities shall be issued to a participant in a distribution where such participant is not a broker-dealer registered with this Division;

(b) Over-allotment shares and shares underlying warrants, options, or convertible securities which are part of the proposed offering are not to be counted as part of the aggregate number of shares being offered against which the ten percent limitation is to be applied.

(c) In an exceptional or unusual case involving an offering of convertible securities of a company whose stock already has a public market and where the circumstances require, taking into consideration the conversion terms of the securities to be received by the above persons, the receipt of underlying shares by such persons aggregating the above referred to ten percent limitation may be considered improper and a lesser amount considered more appropriate.

(d) In an exceptional or unusual case, where a large number of shares of a company are already outstanding and/or the purchase price of the securities, risk involved or the time factor as to acquisition or other circumstances justify, a variation from the above limitations may be permitted but in all cases the burden of demonstrating justification for such shall be upon the person seeking the variation.

KEY: securities regulation
February 2, 2010 61-1-12(1)(f)
Notice of Continuation June 2, 2017

R164. Commerce, Securities.
R164-14. Exemptions.
R164-14-1e. Exchange Listing Exemption.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(1)(e) and Section 61-1-24.

(2) The rule identifies additional exchanges for which the exemption under Subsection 61-1-14(1)(e) is available.

(3) The rule also states the procedure whereby confirmation of the availability of the exemption can be obtained.

(B) Definitions

(1) "Confirmation" means written confirmation of the exemption from registration from the Division.

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

(3) "Exchange Tiers" means the different levels, groups or markets within an exchange or medium, whereby each level requires substantively different, as opposed to alternate and comparable, listing and maintenance criteria.

(4) "Exemption" means the exemption provided in Subsection 61-1-14(1)(e).

(C) Recognized exchanges

(1) A security listed on one of the following exchanges or mediums is exempt from registration:

(1)(a) New York Stock Exchange

(1)(b) NYSE Amex Equities

(1)(c) NASDAQ Global

(1)(d) NASDAQ Global Select

(1)(e) NASDAQ Capital Market

(1)(f) Chicago Board Options Exchange

(1)(g) Philadelphia Stock Exchange.

(2) A security listed on one of the following exchanges or mediums is exempt from registration for the limited purpose of nonissuer transactions effected by or through a licensed broker-dealer:

(2)(a) Chicago Stock Exchange

(2)(b) Philadelphia Stock Exchange/Tier II

(D) Listed securities

(1) As to securities listed with a recognized exchange or medium, the exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(E) Securities approved for listing

(1) A security which is "approved for listing upon notice of issuance" on a recognized exchange or medium enumerated in Subparagraph (C)(1) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(F) Senior or substantially equal rank securities

(1) An unlisted security of the same issuer which is of senior or substantially equal rank to the security listed on a recognized exchange or medium enumerated in Subparagraph (C)(1) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(G) Delisted or suspended securities

(1) If a listed security becomes delisted or suspended, the exemption is not available to the security or a senior or substantially equal rank security for the period during which the security is delisted or suspended.

(H) Requests for confirmation

(1) A confirmation from the Division may be requested by any person.

(2) The request for confirmation must include documentary proof of the listing or approval for listing upon notice of issuance with the recognized exchange or medium which is relied upon as the basis for the exemption.

(3) The required documentary proof must indicate, where applicable, that the listing is current and must include:

(3)(a) a signed copy of the listing agreement;

(3)(b) a copy of the receipt for payment; or

(3)(c) a signed copy of a letter from the recognized exchange or medium with which the security is listed which acknowledges listing and the effective date thereof, or acknowledges approval for listing upon notice of issuance.

(4) Each request for confirmation must include a filing fee as specified in the Division's fee schedule.

(5) In response to a complete request for confirmation, the Division will issue a letter confirming the availability of the exemption.

(6) The Division will issue a copy of the letter confirming the availability of the exemption to any person so requesting in writing or in person for the cost of the photocopying.

(I) Exchange tiers

(1) Except as provided in Subparagraph (I)(2) of this rule, where a recognized exchange or medium has more than one tier, the exemption applies only to the highest tier.

(2) The exemption applies to a lower tier of a recognized exchange or medium if the lower tier is specifically named in this rule.

R164-14-2b. Manual Listing Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(b) and Section 61-1-24.

(2) The rule specifies recognized securities manuals.

(3) The rule prescribes the information upon which each listing must be based to qualify for the exemption.

(4) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(b).

(4)(a) Except as provided in Paragraph (H), the exemption is not self-executing and may not be relied upon until the Division confirms the exemption as provided below.

(4)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(B) Definitions

(1) "Blank-check company" means a development stage company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan

or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(b) of the Act.

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(10) "Significant change" means any change involving a reorganization, merger, acquisition, or other change which causes the issuer to increase its issued and outstanding shares of stock by at least 40% of the issued and outstanding shares before the change.

(C) Recognized securities manuals

(1) The Division recognizes the following securities manuals:

(1)(a) The OTCQX and OTCQB markets maintained by OTC Markets Group Inc.

(1)(b) Mergent's Industrial Manual

(1)(c) Mergent's Bank and Finance Manual

(1)(d) Mergent's Transportation Manual

(1)(e) Mergent's OTC Industrial Manual

(1)(f) Mergent's Public Utility Manual

(1)(g) Mergent's OTC Unlisted Manual

(1)(h) Mergent's International Manual

(D) Information upon which listing must be based

(1) A listing must be based upon the following information, which must be filed with the selected recognized securities manual:

(1)(a) the issuer's name, current street and mailing address and telephone number;

(1)(b) the names and titles of the executive officers and members of the board of directors of the issuer;

(1)(c) a description of the issuer's business;

(1)(d) the number of shares of each class of stock outstanding at the balance sheet date; and

(1)(e)(i) the issuer's annual financial statements as of a date within 18 months which have been prepared in accordance with generally accepted accounting principles, and audited by an independent certified public accountant who has issued an unqualified opinion; if the issuer has been organized for less than one year, the financial statements must be for the period from inception; or

(1)(e)(ii) in the case of a reorganization or merger where the parties to the reorganization or merger had an audited balance sheet and an audited income statement, a pro forma balance sheet for the combined organization and a pro forma income statement.

(E) Confirmation requirement

(1) Except as provided in Paragraph (H), confirmation must be obtained prior to relying upon the exemption.

(2) A request for confirmation must include:

(2)(a) all information filed with the selected recognized securities manual;

(2)(b) a copy of the listing with the recognized securities manual which is based upon the information filed under paragraph (D); and

(2)(c) a filing fee as specified in the Division's fee schedule.

(3) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(4) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(F) Term of exemption

(1) Except as provided in Subparagraph (F)(2), the exemption becomes effective on the date confirmed by the Division.

(2) The exemption for the securities of an issuer which qualify under Paragraph (H) becomes effective on the date a listing, based upon the information required under Paragraph (D), is published in a recognized securities manual.

(3) The exemption shall expire upon the earliest of:

(3)(a) A date 18 months from the date of the annual financial statements required under paragraph (D); or

(3)(b) The date of a new annual issue or edition of the recognized securities manual which does not contain a listing based upon the information required under paragraph (D);

(G) Blank-check, blind-pool, dormant, or shell company

(1) The exemption is not available to a blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) with the recognized securities manual, the information required under paragraph (D), as to all parties to such transaction;

(2)(b) with the Division, the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant or shell company; and

(2)(c) with the Division, the shareholders list of the company, current within thirty days of the request for confirmation of the exemption.

(H) Exceptions to confirmation requirement

(1) Confirmation prior to relying upon the exemption shall not be required for any security if at the time of the transaction:

(1)(a) the security is sold at a price reasonably related to the current market price of such security;

(1)(b) the security does not constitute the whole or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(1)(c) the security has been outstanding in the hands of the public for at least 90 days;

(1)(d) the issuer of the security is a going concern, actually engaged in business and is not in the development stage, in bankruptcy or receivership;

(1)(e) the issuer of the security has been in continuous operation for at least five years; and

(1)(f) the information required by Paragraph (D) is contained in a recognized securities manual listed in Paragraph (C).

R164-14-2m. Secondary Trading Transactional Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(m) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(m).

(2)(a) The exemption is not self-executing. It may not be relied upon until the Division confirms the exemption as provided below.

(2)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(2)(c) The exemption is available only for transactions effected by or through a broker-dealer licensed with the Division.

(B) Definitions

(1) "Blank-check company" means a development stage company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(m).

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(C) Request for confirmation

(1) The broker-dealer or issuer should file a request for confirmation with the Division in advance of the expiration of the previous registration statement or exemption to provide the Division a reasonable period of time in which to review the request.

(2) A request for confirmation must include the information required in paragraph (D).

(3) A request for confirmation must include a fee as specified in the Division's fee schedule.

(4) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(5) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(D) Required information

(1) A reporting company which is required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the preceding year must file one copy of the registration statement or the most recent Form 10-K which was filed with the Securities and Exchange Commission and containing financial statements dated not more than 15 months prior to this filing.

(2) A non-reporting company must file:

(2)(a) The following information:

(2)(a)(i) The exact name of the issuer and its predecessor(s), if any;

(2)(a)(ii) The street address of the issuer's principal executive offices;

(2)(a)(iii) The state of and date of incorporation or organization of the issuer;

(2)(a)(iv) The exact title and class of security for which the exemption is sought;

(2)(a)(v) The par or stated value of the security for which the exemption is sought;

(2)(a)(vi) The number of public, and restricted securities outstanding as of the end of the issuer's most recent fiscal year and a statement as to the date of the last fiscal year end;

(2)(a)(vii) The name and street address of the transfer agent for the securities for which the exemption is sought;

(2)(a)(viii) A description of the nature of the issuer's business;

(2)(a)(ix) A description of the products or services offered by the issuer;

(2)(a)(x) A description of the nature and extent of the issuer's facilities;

(2)(a)(xi) The names, titles and terms of office of the executive officers and members of the board of directors;

(2)(a)(xii) The names and street addresses of broker-dealers in Utah or associated person affiliated, directly or indirectly, with the issuer of the securities for which the exemption is sought.

(2)(b) Financial statements for the issuer's most recent fiscal year which meet all of the following requirements:

(2)(b)(i) be audited or reviewed by an independent Certified Public Accountant (CPA);

(2)(b)(ii) be prepared in conformity with Generally Accepted Accounting Principles (GAAP);

(2)(b)(iii) be prepared in conformity with Generally Accepted Auditing Standards (GAAS), Statements on Standards for Accounting and Review Services (SSARS), or both;

(2)(b)(iv) contain an unqualified audit opinion, where an audit is performed, except that certain qualifications may be allowed in certain circumstances at the discretion of the Division;

(2)(b)(v) contain an accountant's report stating that no material modifications are necessary for the financial statements to conform with GAAP, where a review is performed;

(2)(b)(vi) contain the signature of the preparer of the financial statements;

(2)(c) Financial statements of the issuer for the two fiscal years preceding the most recent fiscal year or for the time the issuer or its predecessor(s) has been in existence. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(d) Financial statements, dated within 30 days before the merger or acquisition, of the corporation, partnership, or proprietorship which was acquired by or merged with the issuer during the issuer's most recent fiscal year. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(e) A statement that the person submitting the information has read all of the information submitted and that to the best of his knowledge the information is accurate and complete;

(2)(f) If a broker-dealer is submitting the information, the original signature of the licensed official of the broker-dealer beneath the statement required by item (e) of this paragraph (D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(g) If an issuer is submitting the information, the original signature of a current executive officer or director of the issuer beneath the statement required by item (e) of this paragraph(D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(h) Copies of all complaints and orders with respect to material litigation that occurred during the past five years involving the issuer, the assets, liabilities, or both of the issuer, the securities of the issuer, or any officer or director of the

issuer; and

(2)(i) Other documents as the Division may request.

(E) Amended information

(1) The required information filed pursuant to paragraph (D) may be amended by forwarding the correct information to the Division and requesting that the file be amended accordingly.

(2) If the amended information indicates that the issuer has changed its fiscal year, an amendment will not be permitted and the information will be treated as a new request for exemption.

(3) No fee is required for an amendment.

(F) Term of exemption

(1) The exemption becomes effective upon the date confirmed by the Division to the earliest of:

(1)(a) A date three months after the issuer's next fiscal year end; or

(1)(b) A date ten working days from the date of any shareholders meeting unless all material changes resulting from the meeting have been filed pursuant to paragraph (E); or

(1)(c) A date 30 calendar days from the date of any material change, not resulting from a shareholder vote, unless information with respect to the material change has been filed pursuant to paragraph (E).

(G) Blank-check, blind-pool, dormant, or shell company

(1) A blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division may not rely upon the exemption.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) the information specified in paragraph (D), as to all parties to the transaction;

(2)(b) the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant, or shell company; and

(2)(c) the shareholders list of the company current within thirty days of the request for confirmation of the exemption.

(H) Miscellaneous

(1) The information contained in broker-dealers' files and the information which they use to solicit transactions relying upon the exemption must be kept current.

(2) In no event does compliance with the requirements of this rule relieve broker-dealers or their agents from any obligations imposed by Section 61-1-1 or 61-1-6 or the rules thereunder.

R164-14-2n. Uniform Limited Offering Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(n) and Section 61-1-24.

(2) Nothing in this rule is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of Section 61-1-1.

(3) In view of the objective of this rule and the purposes and policies underlying Section 61-1-1 et seq., the safe-harbor exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

(4) Nothing in this rule is intended to relieve a licensed broker-dealer or broker-dealer agent from the due diligence, suitability, know-your-customer standards, or any other requirements of state or federal law otherwise applicable to such licensed persons.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Safe-harbor exemption" means the exemption provided in this rule.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Safe-harbor exemption

Any offer or sale of securities offered or sold in compliance with SEC Rule 505, Exemption for Limited Offers and Sales of Securities Not Exceeding $5,000,000, 17 CFR 230.505 (1993), including any offer or sale made exempt by application of SEC Rule 508, Insignificant Deviations from a Term, Condition or Requirement of Regulation D, 17 CFR 230.508 (1993), which are adopted and incorporated by reference and available from the SEC and the Division, and which offer or sale of securities satisfies the following further conditions and limitations is determined to be exempt from the registration requirement of Section 61-1-7:

(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately licensed with the Division.

(a) It is a defense to a violation of this paragraph if the issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately licensed with the Division.

(2) The safe-harbor exemption shall not be available for the securities of any issuer if any of the parties described in SEC Rule 262, Disqualification Provisions, 17 CFR 230.262 (1994), which is adopted and incorporated by reference and available from the Division:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law.

(b) Has been convicted within five years prior to the filing of the notice required under this rule of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(c) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this rule or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this rule.

(d) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

(e) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this rule.

(f) The prohibitions of Subparagraphs (a) through (c) and (e) above shall not apply if the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer

employing such party is licensed with the Division and SEC Form BD - Uniform Application for Broker-Dealer Registration, July 1988, filed with the CRD discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed.

(g) Any disqualification caused by this paragraph is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines that it is not necessary that the safe-harbor exemption be denied.

(h) It is a defense to a violation of this paragraph if issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(D) Notice requirement

(1) The issuer shall file with the Division:

(a) One manually-signed copy of SEC Form D, 17 CFR 239.500 (1993), no later than 15 days after the first sale of securities in Utah in reliance upon this safe-harbor exemption and at such other times and in the form required to be filed with the Securities and Exchange Commission under SEC Rule 503, Filing of Notice of Sales, 17 CFR 230.503 (1993);

(b) One copy of the information furnished by the issuer to offerees located within the state;

(c) NASAA Form U-2 - Uniform Consent to Service of Process, which is available from NASAA or the Division; and

(d) A fee as specified in the Division's fee schedule.

(2) Within 30 days after termination of the offering the issuer shall file with the Division one completed Division Form 14-2n, Uniform Limited Offering Exemption Final Report.

(E) Sales to nonaccredited investors

(1) In all sales to nonaccredited investors in this state one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(a) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.

(b) The purchaser either alone or with a representative has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(F) Effect upon exemption from Section 61-1-7 of failure to comply with certain provisions

A failure to comply with a term, condition or requirement of Subparagraph (C)(1) or Paragraphs (D) or (E) of this rule will not result in loss of the exemption from the requirements of Section 61-1-7 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1), or Paragraphs (D) or (E) of this rule.

(G) Limitation of exemption established in reliance upon Paragraph (F)

Where an exemption is established only through reliance upon Paragraph (F) of this rule, the failure to comply shall nonetheless be actionable by the director under Section 61-1-14 or 61-1-20.

(H) Prohibition against combining exemption with other exemptions

Transactions which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions of this safe-harbor exemption, the issuer may claim the availability of any other applicable exemption.

(I) Authority to modify or waive conditions

The director may, by order, increase the number of purchasers or waive any other conditions of this safe-harbor exemption.

(J) Title

The safe-harbor exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

R164-14-2p. Reorganization Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(p) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the exemption contained in Subsection 61-1-14(2)(p). The exemption is not self-executing.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Exemption" means the exemption provided in Subsection 61-1-14(2)(p).

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Filing Requirements

Persons whose security holders are to consent, vote or resolve as to a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets may claim the exemption by filing with the Division, not less than ten business days prior to any necessary vote or action on any necessary consent or resolution, all of the following:

(1) the proxy or informational materials required by Paragraph (D);

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a fee as specified in the Division's fee schedule; and

(4) other documents as the Division may request.

(D) Proxy or informational materials

The Proxy or informational materials to be filed with the Division pursuant to Subparagraph (C)(1) and distributed to all securities holders entitled to vote in the transaction or series of transactions shall be:

(1) the proxy or informational materials filed under Section 14(a) or (c) of the Securities Exchange Act of 1934 if any person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 and has so filed;

(2) the proxy or informational materials filed with the appropriate regulatory agency or official of its domiciliary state if any person involved in the transaction is an insurance company who is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934; or

(3) one manually signed Form 14-2p and the information specified in SEC Schedule 14A, Form S-4, or Form F-4 if all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934.

(E) Transactions eligible for exemption

For purposes of Subsection 61-1-14(2)(p)(i), "each person involved" includes each person whose securities are offered or sold to or purchased from the securities holders of such persons.

R164-14-2v. MJDS - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(v) and Section 61-1-24.

(2) This rule provides a secondary trading exemption for securities offered by Canadian issuers which have been offered in the United States pursuant to MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in any class of a Canadian issuer's security which has been offered pursuant to Section 61-1-9 and MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC and the Division.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-21v. Solicitations of Interest Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(v) and Section 61-1-24.

(2) The rule enables an issuer to solicit indications of interest in a future offering of securities by the issuer to determine the likelihood of success of the offering before incurring costs associated with registering the offering.

(3) All communications made in reliance on this rule are subject to the anti-fraud provisions of Section 61-1-1.

(4) The Division may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

(5) Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section 61-1-22. Likewise any misrepresentation or omission may give rise to civil liability. Under the Act, a subsequent registration of the security for the sale of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure."

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Director" means the director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Requirements

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from Section 61-1-7, if all of the following conditions are satisfied:

(1)(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada;

(1)(b) The issuer is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described;

(1)(c) The offerer intends to register the security in this state and conduct its offering pursuant to either SEC Regulation A, Conditional Small Issues Exemption, 17 CFR 230.251 through 17 CFR 230.263 (1995), SEC Rule 504, Exemption for Limited Offerings and Sales of Securities Not Exceeding $1,000,000, 17 CFR 230.504 (1995), or SEC Rule 147, "Part of an Issue," "Person Resident," and "Doing Business Within" for Purposes of Section 3(a)(11), 17 CFR 230.147 (1995), which are incorporated by reference;

(1)(d) Ten (10) business days prior to the initial solicitation of interest under this rule, the offerer files with the Division, Form 14-21s, Solicitation of Interest Form, any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published, and a fee as specified in the Division's fee schedule;

(1)(e) Five (5) business days prior to usage, the offerer files with the Division any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(1)(f) No Solicitation of Interest Form, script, advertisement or other material can be used to solicit indications of interest unless approved by the Division;

(1)(g) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) calendar days from the communication;

(1)(h) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(1)(i) No sale is made until seven (7) calendar days after delivery to the purchaser of a final prospectus or in those instances in which delivery of a preliminary prospectus is allowed, a preliminary prospectus; and

(1)(j) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(1)(j)(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form;

(1)(j)(ii) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(1)(j)(iii) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the SEC within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found;

(1)(j)(iv) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(1)(j)(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(2) The prohibitions listed in Subparagraph (C)(1)(j) shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing the party is licensed in this state and the SEC Form BD - Uniform Application for Broker-Dealer Registration, filed with this state discloses the order, conviction, judgment or decree relating to the person. No person disqualified under subparagraph (C)(1)(j) may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by subparagraph (C)(1)(j) is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(3)(a) A failure to comply with any condition of Subparagraph (C)(1) will not result in the loss of the exemption from the requirements of Section 61-1-7 for any offer to a particular individual or entity if the offerer shows:

(3)(a)(i) the failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(3)(a)(ii) the failure to comply was insignificant with respect to the offering as a whole; and

(3)(a)(iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1).

(3)(b) Where an exemption is established only through reliance on Subparagraph (C)(3)(a), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under Section 61-1-20 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of Section 61-1-7, but shall be a violation of the Act, be actionable by the Director under Section 61-1-20, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4)(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(4)(a)(i) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(4)(a)(ii) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(4)(a)(iii) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(4)(a)(iv) THIS OFFER IS BEING MADE PURSUANT TO THE REQUIREMENTS OF FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION IF MADE PURSUANT TO REGULATION A, AND IS REGISTERED IN THIS STATE;

(4)(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule; and

(4)(c) A preliminary prospectus, or its equivalent, may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

(5) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(6) Offers made in reliance on this rule will not result in a violation of Section 61-1-7 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(7) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on Subsections 61-1-14(2)(i), 61-1-14(2)(n) or 61-1-14(2)(q) until six (6) months after the last communication with a prospective investor made pursuant to this rule.

R164-14-23v. Foreign Securities - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(v) and Section 61-1-24.

(2) This rule provides an exemption for secondary market transactions in securities offered by foreign issuers satisfying the requirements of this rule.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in an outstanding security issued by any corporation organized under the laws of a foreign country with which the United States currently maintains diplomatic relations (or an American Depository Receipt relating to such a security), provided either:

(1)(a) the security appears in the most recent Federal Reserve Board List of Foreign Margin Stocks;

(1)(b) the issuer is currently required to file with the Securities and Exchange Commission information and reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 and is not delinquent in such filing; or

(1)(c) the issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 and all of the following conditions are met:

(1)(c)(i) the issuer, including any predecessors, has been in continuous operation for at least 5 years and is a going concern actually engaged in business and neither in the organization stage nor in bankruptcy or receivership;

(1)(c)(ii) the number of shares outstanding is at least 2,500,000 and the number of shareholders is at least 5,000;

(1)(c)(iii) the market value of the outstanding shares, other than debt securities and preferred stock, is at least U.S. $100 million;

(1)(c)(iv) the issuer, as of the date of its most recent

financial statement, which may not be more than 18 months old and which has been audited in accordance with the generally accepted accounting principles of its country of domicile, has net tangible assets of at least U.S. $100 million;

(1)(c)(v) the issuer had net income after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of either

(1)(c)(v)(aa) at least U.S. $50 million in total for its last three fiscal years, or

(1)(c)(v)(bb) at least U.S. $20 million in each of its last two fiscal years; and

(1)(c)(vi) if the security is a debt security or preferred stock, the issuer has not during the past 5 years, or during the period of its existence if shorter, defaulted in the payment of any dividend, principal, interest or sinking fund installment thereon.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-24v. Internet Solicitations Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(v) and Section 61-1-24.

(2) This rule provides an exemption for offers effected through the Internet which do not result in sales in Utah.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Offer" means a communication, regarding the offering of securities within the meaning of Subsection 61-1-13(1)(bb)(ii), made on the Internet and directed generally to anyone who has access to the Internet, including persons in Utah.

(C) Exemption

(1) The Division finds that registration is not necessary or appropriate for the protection of investors in connection with Internet Offers, provided:

(1)(a) an offer is not specifically directed to any person in Utah;

(1)(b) the Internet Offer indicates that the securities are not being offered to and sales will not be effected with persons in Utah; and

(1)(c) no sales of the issuer's securities are made in Utah as a result of the Internet Offer.

R164-14-25v. Accredited Investor Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(v) and Section 61-1-24.

(2) This rule provides an exemption for offers and sales to accredited investors. The rule also permits a limited use advertisement.

(B) Definitions

(1) "Accredited Investor" means an accredited investor as defined in 17 CFR 230.501(a) which is incorporated by reference.

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

(3) "Exemption" means the exemption provided in Subsection 61-1-14(2)(v).

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors pursuant to Section 61-1-14(2)(v) in connection with any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule.

(D) Purchaser qualifications

Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.

(E) Issuer Limitations

The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(F) Investment Intent

The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Sections 61-1-9, or 6-1-10 or to an accredited investor pursuant to an exemption under Section 61-1-14.

(G) Disqualifications

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (G)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (G).

(H) General Announcement

(1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Division:

(2)(a) The name, address and telephone number of the issuer of the securities;

(2)(b) The name, a brief description and price (if known) of any security to be issued;

(2)(c) A brief description of the business of the issuer in 25 words or less;

(2)(d) The type, number and aggregate amount of securities being offered;

(2)(e) The name, address and telephone number of the person to contact for additional information; and

(2)(f) A statement that:

(2)(f)(i) sales will only be made to accredited investors;

(2)(f)(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(2)(f)(iii) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(I) Additional Information

The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (H), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(J) Telephone Solicitations

No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(K) Effect of dissemination of general announcement to nonaccredited investors

Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(L) Filing Requirements

The issuer shall file with the Division, within 15 days after the first sale in Utah:

(1) one manually signed Form 14-25s, Accredited Investor Exemption Uniform Notice of Transaction Form;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a copy of the general announcement; and

(4) a fee as specified in the Division's fee schedule.

R164-14-26v. Reorganization Exemption for Transactions Involving Certain Federal Covered Securities.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(v) and Section 61-1-24.

(2) This rule provides an exemption for any transaction involving a reorganization where the securities issued in the transaction are, or will be upon completion of the transaction, covered securities pursuant to section 18(b)(1) of the Securities Act of 1933.

(3) While the Division is preempted by federal law from requiring registration of a covered security, there is no such preemption of licensing requirements for issuer agents which offer or sell covered securities.

(4) By providing this exemption, issuers that participate in a reorganization whose securities are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933, will not be required to license agents which meet the exclusion requirements of Subsection 61-1-13(1)(b).

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with any transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets where the securities issued in connection with the transaction are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933.

R164-14-27v. Compensatory Benefit Plan Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(v) and Section 61-1-24.

(2) This rule provides an exemption from the registration requirements of Section 61-1-7 for securities issued in compensatory circumstances. The exemption is not available for plans or schemes to circumvent this purpose, such as to raise capital. This exemption also is not available for any transaction that is in technical compliance with this rule but is part of a plan or scheme to evade the registration provisions of Section 61-1-7. In any of these cases, registration under the Act is required unless another exemption is available.

(3) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of Section 61-1-1.

(4) Attempted compliance with the rule does not act as an exclusive election. The issuer can also claim the availability of any other applicable exemption.

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Compensatory Benefit Plan Exemption

(1) Offers and sales made in compliance with SEC Rule 701, Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation, 17 CFR 230.701 (1999), which is adopted and incorporated by reference and available from the Division, are determined to be exempt from the registration requirements of Section 61-1-7.

(D) Resale limitations

The resale of securities issued pursuant to this rule must be in compliance with the registration requirements of Section 61-1-7 or an exemption therefrom.

(E) Disqualification

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (E)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (E).

KEY: securities, securities regulation
June 8, 2017 **61-1-7**
Notice of Continuation June 2, 2017 **61-1-8**
61-1-9
61-1-10
61-1-20
61-1-22
61-1-24

R164. Commerce, Securities.

R164-15. Federal Covered Securities.

R164-15-1. Notice Filings for Offerings of Investment Company Securities.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing prior to the offer or sale of securities described in Subsection 61-1-15.5(1) and sets forth the filing procedure.

(3) The rule also authorizes optional electronic filing of notices.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

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

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Filing requirements

(1) Prior to the offer or sale of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, the issuer must submit to the Division or its designee the following:

(1)(a) A completed manually signed NASAA Form NF;

(1)(b) A completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process; and

(1)(c) A fee as specified in the Division's fee schedule.

(2) The issuer may submit a copy of all documents that are part of the federal registration statement filed with the SEC as a substitute for NASAA Form NF.

(3) Upon written request of the Division and within the time period set forth in the request, the issuer must submit to the Division a copy of any document, identified in the request, that is part of the federal registration statement filed with the SEC or is part of an amendment to such federal registration statement.

(4) All securities included in the same prospectus may be covered under a single notice filing.

(5) An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.

(D) Term of notice filing

(1) Except as provided in Subparagraph (D)(2), a notice filing under Paragraph (C) is effective for one year from the date filed with the Division or its designee.

(2) A notice filing under Paragraph (C) for a unit investment trust is for an indefinite period of time from the date filed with the Division or its designee.

(3) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(E) Renewal

A notice filing, for which the term is about to expire, may be renewed by submitting to the Division or its designee, another notice and payment of the applicable fee in accordance with Paragraph (C).

(F) Amendments

(1) The materials filed pursuant to Paragraph (C) may be amended by forwarding the corrected information to the Division or its designee and requesting that the file be amended accordingly.

(2) No fee is required for an amendment.

(G) Recognized designee

(1) The Division authorizes and recognizes the Securities Registration Depository, Inc. as a designee to receive notice filings under this rule on behalf of the Division, including but not limited to notices, fees, and all documents that are part of a federal registration statement filed with the SEC under the Securities Act of 1933.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

(H) Sales Report

Within 30 days of the close of the offering or when the issuer ceases to rely upon the notice, whichever occurs first, unit investment trusts shall file a sales report on NASAA Form NF. No sales report is required for open-end management investment companies.

R164-15-2. Notice Filings for Rule 506 Offerings.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing within 15 days after the first sale in this state of securities described in Subsection 61-1-15.5(2) and sets forth the filing procedure.

(3) This rule is hereby amended to recognize the following:

(3)(a) The amendment of Regulation D by the Securities and Exchange Commission (SEC) to authorize the filing of Form D in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) as described in Securities and Exchange Commission Securities Act Release No. 8891; and

(3)(b) The establishment of the Electronic Filing Depository (EFD), operated by the North American Securities Administrators Association, Inc. (NASAA) to receive and store all Form D notice filings and amendments (17 CFR 239.500) and to collect filing fees on behalf of the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "NASAA" means the North American Securities Administrators Association, Inc.

(3) "EFD" means the Electronic Filing Depository established and maintained by NASAA.

(C) Designation and filing requirements

(1) For all notice filings authorized by Subsection 61-1-15.5(2), the Division hereby designates EFD to receive and store all notice filings made on SEC Form D (17 CFR 239.500) and to collect related filing fees on behalf of the Division.

(2) Unless otherwise provided, upon notice in paragraph (C)(3) below, all Form D notice filings, amendments, and related filing fees shall be filed electronically with and transmitted to EFD.

(3) Notwithstanding paragraph (C)(2) of this rule, the electronic filing of Form D notice filings and amendments and the collection of related processing fees shall not be required until such time as EFD provides for receipt of such filings and fees and thirty (30) days notice is provided by the Division. Any documents or fees required to be filed with the Division that are not permitted to be filed with, or cannot be accepted by, EFD shall be filed directly with the Division.

(4) A duly authorized person of the issuer shall affix his or her electronic signature to the Form D filing by typing his or her name in the appropriate fields and submitting the filing to EDGAR. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing both for purposes of authorizing the disclosures in the Form as well as giving effect to any consent to service provisions found therein.

(5) Subsequent to the expiration of the notice period in

paragraph (C)(3), no filing, partial filing, or filing fee submitted to the Division by means other than EFD shall act to grant such a filing the status of being duly received by the Division for any purpose relating to the timeliness of the filing or the avoidance of the assessment of any late filing fee.

(D) Filing requirements prior to Paragraph (C)(3) notice

(1) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 must file with the Division or its designee, no later than 15 days after the first sale of such federal covered security in this state, an initial notice and a filing fee as follows:

(1)(a) The issuer shall file an initial notice on SEC Form D. For Purposes of Subsection 61-1-15.5(2), the initial notice on SEC Form D shall consist of a copy of the notice of sales on Form D filed in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(1)(b) Such form shall be manually signed by a person duly authorized by the issuer;

(1)(c) The issuer shall include with the initial notice a statement indicating:

(1)(c)(i) The date of the first sale of securities in the state of Utah; or

(1)(c)(ii) That sales have yet to occur in the state of Utah; and

(1)(d) The issuer shall submit a fee as specified in the Division's fee schedule.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time and must file such an amendment to correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error.

(3) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

R164-15-3. Notice Filings for Offerings Made Under Tier 2 of Federal Regulation A.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5(3) and 61-1-24.

(2) The rule requires a notice filing within 15 days after the first sale in this state of securities described in Subsection 61-1-15.5(3) and sets forth the filing procedure.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "NASAA" means the North American Securities Administrators Association, Inc.

(3) "EFD" means the Electronic Filing Depository established and maintained by NASAA.

(C) Filing Requirements:

(1) An issuer offering a security that is a covered security under section 18(b)(3) of the Securities Act of 1933 must file with the Division or its designee, no later than 15 days after the first sale of such federal covered security in this state, an initial notice and a filing fee as follows:

(1)(a) A completed Uniform Notice of Regulation A -- Tier 2 Offering notice filing form or copies of all documents filed with the Securities and Exchange Commission;

(1)(b) A consent to service of process on Form U-2 if not filing on the Uniform Notice of Regulation A -- Tier 2 Offering notice filing form;

(1)(c) The forms referenced in (3)(a)(i) and (ii) above shall be manually signed by a person duly authorized by the issuer;

(1)(d) The issuer shall include with the initial notice a statement indicating:

(1)(d)(i) The date of the first sale of securities in the state of Utah; or

(1)(d)(ii) That sales have yet to occur in the state of Utah; and

(1)(e) The issuer shall submit a fee as specified in the Division's fee schedule.

(2) An issuer may file an amendment to a previously filed notice filing at any time and must file such an amendment to correct a material mistake of fact or error in the previously filed notice of sales as soon as practicable after discovery of the mistake or error.

(3) An issuer that files an amendment to a previously filed notice filing must provide current information in response to all requirements of the notice filing form regardless of why the amendment is filed.

(D) Designation of EFD for Electronic Filings

(1) At such time as the EFD system is operationally configured to receive such filings, the Division hereby designates EFD to receive and store notice filings made on Uniform Notice of Regulation A -- Tier 2 Offering and to collect related filing fees on behalf of the Division.

(2) The filing of notice filings made on Uniform Notice of Regulation A -- Tier 2 Offering and the collection of related processing fees through the EFD system is permissive and shall not be required until the Division shall amend this Rule to designate a specific date of mandatory compliance. The public notice designated for Form D filings in Section R164-15-2(C)(3) shall not constitute such an amendment.

(3) Any documents or fees required to be filed with the Division that are not permitted to be filed with, or cannot be accepted by, EFD shall be filed directly with the Division.

(4) A duly authorized person of the issuer shall affix his or her electronic signature to the notice filing on Uniform Notice of Regulation A -- Tier 2 Offering by typing his or her name in the appropriate fields and submitting the filing to EFD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing both for purposes of authorizing the disclosures in the Form as well as giving effect to any consent to service provisions found therein.

(5) Subsequent to the amendment of this Rule referenced in paragraph (D)(2) above, no filing, partial filing, or filing fee submitted to the Division by means other than EFD shall act to grant such a filing the status of being duly received by the Division for any purpose relating to the timeliness of the filing or the avoidance of the assessment of any late filing fee.

R164-15-4. Notice Filings for Offerings Made Under Federal Crowdfunding Provisions.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5(3) and 61-1-24.

(2) The rule requires a notice filing for offerings made under federal Regulation Crowdfunding, 17 C.F.R. Sec. 227 and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 and sets forth the filing procedure.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "NASAA" means the North American Securities Administrators Association, Inc.

(3) "EFD" means the Electronic Filing Depository established and maintained by NASAA.

(C) Filing Requirements:

(1) An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding, and that either has its principal place of business in this state or sells fifty percent (50%) or greater of the aggregate amount of the

offering to residents of this state, shall file the following with the Division or its designee:

(1)(a) A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission;

(1)(b) A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form;

(1)(c) A filing fee as specified in the Division's fee schedule.

(1)(d) The forms referenced in (C)(1)(a) and (b) above shall be manually signed by a person duly authorized by the issuer.

(2) If the issuer has its principal place of business in this state, the filing required under paragraph (A) of this section shall be filed with the Division no later than 15 days after the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission.

(3) If the issuer does not have its principal place of business in this state, but residents of this state have purchased fifty percent (50%) or greater of the aggregate amount of the offering, the filing required under paragraph (A) of this section shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than 15 days from the date of the completion of the offering.

(4) An issuer may file an amendment to a previously filed notice filing at any time and must file such an amendment to correct a material mistake of fact or error in the previously filed notice of sales as soon as practicable after discovery of the mistake or error.

(5) An issuer that files an amendment to a previously filed notice filing must provide current information in response to all requirements of the notice filing form regardless of why the amendment is filed.

(D) Designation of EFD for Electronic Filings

(1) At such time as the EFD system is operationally configured to receive such filings, the Division hereby designates EFD to receive and store notice filings made on Uniform Notice of Federal Crowdfunding Offering and to collect related filing fees on behalf of the Division.

(2) The filing of notice filings made on Uniform Notice of Federal Crowdfunding Offering and the collection of related processing fees through the EFD system is permissive and shall not be required until the Division shall amend this Rule to designate a specific date of mandatory compliance. The public notice designated for Form D filings in Section R164-15-2(C)(3) shall not constitute such an amendment.

(3) Any documents or fees required to be filed with the Division that are not permitted to be filed with, or cannot be accepted by, EFD shall be filed directly with the Division.

(4) A duly authorized person of the issuer shall affix his or her electronic signature to the notice filing on Uniform Notice of Federal Crowdfunding Offering form by typing his or her name in the appropriate fields and submitting the filing to EFD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing both for purposes of authorizing the disclosures in the Form as well as giving effect to any consent to service provisions found therein.

(5) Subsequent to the amendment of this Rule referenced in paragraph (D)(2) above, no filing, partial filing, or filing fee submitted to the Division by means other than EFD shall act to grant such a filing the status of being duly received by the Division for any purpose relating to the timeliness of the filing or the avoidance of the assessment of any late filing fee.

KEY: mutual funds, securities, securities regulation
June 30, 2017 61-1-15.5
Notice of Continuation June 2, 2017 61-1-24

R164. Commerce, Securities.
R164-26. Consent to Service of Process.
R164-26-6. Consent to Service.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-26 and 61-1-24.

(2) This rule designates the form to be used for consents to service of process.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

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

(C) Form

(1) Except as provided in subparagraph (C)(2), for the purposes of all rules, regulations, orders of the Division, or the Act, the Consent to Service of Process which is to be used, is the NASAA Form U-2 - Uniform Consent to Service of Process.

(2) A Form U-4, Uniform Application for Securities Industry Registration or Transfer, Form ADV, Uniform Application for Investment Adviser Registration, and Form BD, Uniform Application for Broker-Dealer Registration, may be used in lieu of the Form U-2 provided that an originally executed copy of such form is filed with the Division

(D) Agent

All consents to service of process filed with the Division shall appoint the "Director, Utah Division of Securities" as agent for service of process.

(E) Incorporation by reference

For purposes of consents to service of process required to be filed under the Act, a broker-dealer, agent, federal covered adviser, investment adviser, investment adviser representative, or issuer may incorporate by reference in a current application any consent to service of process previously filed with the Division by such person or entity.

KEY: securities regulation
March 4, 1998 61-1-24
Notice of Continuation June 2, 2017 61-1-26(6)

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) "PEHP" means the Public Employees' Benefit and Insurance Program created in Section 49-20-103;

(d) "primary victim" means a victim who has been directly injured by criminal conduct;

(e) "program" means the Victim Services Grant Program, authorized under Section 63M-7-506(l)(i), which allocates money for other victim services once a sufficient reserve has been established for reparations claims; and

(f) "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.

(4) The office shall pay the amount that would be paid by PEHP for prescription medications dispensed by a pharmacy, not including those included in R270-1-23.

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 60% 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 60% 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) medications administered to the patient at the time of services, including:

(A) the morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

(B) 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
June 7, 2017 Title 63M, Chapter 7, Part 5
Notice of Continuation June 15, 2016

R277. Education, Administration.
R277-101. Utah State Board of Education Procedures.
R277-101-1. Definitions.

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

B. "Board leadership" means the Leadership Committee as defined in the Board Bylaws.

C. "Chair" means duly elected Chairperson of the Board, Vice-chair, or Chair of a Board standing committee.

D. "Conflict of interest" means a business, family, monetary or relationship concern that may cause a reasonable person to be unduly influenced or that creates the appearance of undue influence.

E. "Health, safety, and welfare of students" means such concerns as adequate and safe buildings and facilities and transportation vehicles, required immunizations and health screenings, required criminal background checks and reviews on potential teachers and employees, required curriculum that allows for complete transferability of credit and other similar standards and protections.

F. "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.

G. "Official action" taken by local education agency (LEA) boards means action taken in appropriately advertised board meetings, where votes and minutes are recorded and available for public review.

H. "State or federal law or regulations" means federal law and regulations including Department of Agriculture regulations that govern the Child Nutrition Program as it operates in Utah public schools, the Individuals with Disability Education Act (IDEA), including federal and state implementing regulations and state administrative rules.

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

R277-101-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 52-4-1 which directs that the actions of the Board be taken openly and that its deliberations be conducted openly and by 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 describe procedures to be followed by the Board in its conduct of the public's business in order to:

(1) hear from those who desire to be heard on public education matters in the state;

(2) effectively and efficiently utilize the time of the Board;

(3) enable staff to provide timely and essential information; and

(4) balance desire for public information with other demands on the Board's time.

R277-101-3. Public Participation.

A. Citizens may attend meetings of the Board. The Board welcomes public participation during Board meetings.

B. Citizens may speak to the Board when acknowledged and recognized by the Board Chair:

(a) to issues not on the agenda during the time designated for public comment.

(i) Priority shall be given to those individuals or groups who, prior to the meeting, have submitted a written request to address the Board, including a brief description of the issue to be addressed.

(ii) No action shall be taken by the Board during the public comment portion of the meeting.

(iii) At the Board's discretion, a Board member may request that an item raised during public comment be placed on a future agenda for possible action.

(iv) The Chair may limit the time available for individual comments; number of comments and time limits shall be stated prior to the public comment portion of the agenda.

(v) The Chair may request groups to designate a spokesperson.

(b) to items on the agenda during the time designated for public comment, or at the discretion of and as invited by the Chair, when the item is properly before the Board or committee. The Chair may request that public comments be provided in writing.

C. All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

D. Additional comments to the Board or committees may only be made as recognized and invited by the Board Chair during a meeting.

R277-101-4. Reconsideration on Previous Board Action.

A. The Board has discretion to reconsider any decision it has made.

B. A motion to reconsider shall be made in a meeting of the Board that satisfies requirements of Section 52-4 by a Board member who voted on the prevailing side of the previous Board vote.

C. A motion to reconsider requires a second.

D. A motion to reconsider a previous Board decision shall be ruled in order by the Board Chair only with adequate time for Board members to receive information and discuss the issue, as determined by the presiding Board officer.

E. The Board Chair shall determine the procedures for the reconsideration discussion; for instance:

(1) The Board Chair shall determine if the Board shall accept public testimony and how long the discussion shall continue;

(2) The Board Chair shall determine if the reconsideration vote may take place at the next regularly scheduled Board meeting if such meeting allows time for adequately providing information to Board members;

(3) The Board Chair shall determine if more information is necessary prior to a vote, even if the Board vote is to be held at the same Board meeting.

F. The Board shall consider and hear available evidence, including documentation of detrimental or positive consequences specifically to LEAs or other entities, that may occur if the Board reverses a previous decision.

G. The motion to reconsider shall pass if two-thirds of the total membership of the Board votes in favor of the motion.

H. If a motion to reconsider fails, the Board shall not consider a motion on the same or substantially similar motion to reconsider in the same meeting.

I. A Board vote taken upon reconsideration of the same or substantially similar issue is the administrative decision by the Board.

R277-101-5. Board Waiver of Administrative Rules.

A. Criteria for waiver of Board Rules:

(1) The Board shall consider waiver requests consistent with its constitutional responsibility for general control and supervision of the public education system.

(2) Prior to waiver, the Board shall consider whether a local board's or local charter governing board's request could be accomplished through means other than waiver of Board rules.

(3) The Board shall waive rules only following a thorough review of available data and shall make data driven decisions.

(4) The Board shall not waive rules:

(a) that are required by and adopt criteria from federal or state law or regulations;

(b) that negatively affect the health, safety or welfare of public education students;

(c) if the waiver could reasonably result in discrimination or harassment of public school students or employees;

(d) that benefit one element or segment of the public education system to the detriment of another.

(5) Waivers shall always include an effective time period for the waiver, public review and accountability provisions and a sunset date.

(6) Prior to consideration by the Board, waivers requested by charter schools shall be presented to and considered by the State Charter School Board. Information and documentation of this action shall be available to the Board.

(7) All Board evaluations, considerations, and decisions shall be made in the Board's sole discretion.

B. Procedures for waiver of Board rules:

(1) A local board of education or a charter school governing board may request a waiver from Board rule(s) in writing consistent with USOE timelines and on forms available from the USOE by submitting to the Board a written request showing a vote by the local board requesting the waiver in an open board meeting.

(2) Complete waiver requests shall be reviewed first by a Board Committee during a regularly scheduled Board meeting.

(3) The Board Committee designated by Board leadership shall review the request, solicit additional information or testimony, if helpful, and make a recommendation for consideration by the full Board of Education.

(4) Board leadership or a Board Committee shall make a reasonable determination of the time or Committee meetings necessary for careful review of request(s) for waiver of Board rules; Board leadership may consolidate consideration of duplicate or similar requests.

(5) At a minimum, the following shall be required from LEAs seeking a waiver of Board rules:

(a) student achievement data that support the requested waiver;

(b) data demonstrating the cost effectiveness, without sacrificing student achievement, of the waiver request;

(c) a draft proposed agreement that outlines USOE and local board responsibilities, data gathering and reporting timelines if a waiver is granted by the Board.

(6) Upon direction by the Board, an LEA shall make a presentation to an assigned Board Committee.

(7) Board leadership shall notify the local board of a proposed timeline for the Board to consider the request for waiver and provide a written decision, including an agreement between the Board and the local governing board, to the local board.

C. Public process and documents:

(1) Materials presented to the Board by the local board shall be public documents.

(2) Materials and draft agreements between the Board and the local board shall be protected draft documents.

(3) Final agreements between the Board and local governing boards shall be public documents and available for review by the public upon request consistent with the provisions of Title 63G, Chapter 2.

(4) Any breach of confidentiality while the discussion of agreements is in progress may compromise the fairness of the Board decision and may delay the discussion or Board decision or both.

KEY: school boards, open government
April 22, 2013 **Art X Sec 3**
Notice of Continuation June 6, 2017 **52-4-1**
53A-1-401(3)

R277. Education, Administration.
R277-410. Accreditation of Schools.
R277-410-1. Definitions.

A. "Accreditation" means the formal process for internal and external review and approval under the Standards for the Northwest Accreditation Commission, a division of Advance Education Inc., (AdvancED).

B. "AdvancED" means the provider of accreditation services based on standards, student performance and stakeholder involvement and nonprofit resource offering school improvement and accreditation services to education providers.

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

D. "Elementary school" for the purpose of this rule means grades no higher than grade 6.

E. "Junior high school" for purposes of this rule means grades 7 through 9.

F. "Middle school" for the purpose of this rule means grades no lower than grade 5 and no higher than grade 8 in any combination.

G. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member. Northwest is an accreditation division of AdvancED.

H. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

I. "State Council" means the State Accreditation Council, which is composed of 15- 20 public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel. The members are selected to provide statewide representation and volunteer their time and service.

J. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

R277-410-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, by Subsection 53A-1-402(1)(c)(i), which directs the Board to adopt rules for school accreditation, and Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily and for nonpublic schools which voluntarily request AdvancED Northwest accreditation.

R277-410-3. Accreditation of Public Schools.

A. The Superintendent has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. A Utah public secondary school, as defined in R277-410-1H and consistent with R277-481-3A(2), shall be a member of AdvancED Northwest and be accredited by AdvancED Northwest.

C. A Utah public elementary or middle school that desires accreditation shall be a member of AdvancED Northwest and meet the requirements of R277-410-5 and R277-410-6. AdvancED Northwest accreditation is optional for Utah elementary and middle schools.

D. An AdvancED Northwest accredited school shall complete and file reports in accordance with AdvancED Northwest protocols.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

R277-410-4. Accreditation Status; Reports.

A. The Board accepts the AdvancED Northwest Standards for Quality Schools as the basis for its accreditation standards for school accreditation.

B. A Utah public school seeking accreditation shall meet additional specific Utah assurances in addition to required AdvancED Northwest standards.

C. A school shall complete reports as required by AdvancED Northwest and submit the report to the appropriate recipients.

D. A school shall have a complete school evaluation and site visit at least once every five years to maintain its accreditation.

E. The Board or Superintendent may require on-site visits as often as necessary when the Superintendent receives notice of accreditation problems, as determined by the Superintendent, AdvancED Northwest, or its State Council.

F. The school's accreditation status is recommended by the State Council following a review of the report of the school's External Review. Final approval of the status is determined by the AdvancED Commission and approved by the Board.

R277-410-5. Accreditation Procedures.

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the Superintendent, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.

B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to AdvancED. The accepted application shall be forwarded to the AdvancED Managing Office Director.

(1) If a school's application for membership is accepted by AdvancED, the Utah AdvancED Managing Office shall schedule an on-site Readiness Review. Upon successful completion of the Readiness Review, the school may become a candidate for accreditation. Candidate schools are not accredited until such status is officially granted.

(2) A school may remain in candidacy for no more than two years prior to hosting an External Review Team accreditation visit. The External Review Team shall be staffed with at least two qualified educators verifying a school's compliance with accreditation standards. Following approval by both the Utah AdvancED Council and the AdvancED Commission, the school shall receive accreditation. A school may request an External Review accreditation visit prior to year two if the school has sufficient student and financial data.

C. AdvancED Northwest accredited schools shall be subject to:

(1) compliance with AdvancED Northwest membership requirements;

(2) satisfactory review by the AdvancED State Council, AdvancED Northwest Commission and Board approval;

(3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:

(a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, and other appropriate parties.

(b) AdvancED staff shall review the external review team report, and consult with the Utah AdvancED Council. The AdvancED Commission shall grant accreditation status if appropriate.

D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

R277-410-6. Elementary School Accreditation.

A. Elementary schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to AdvancED Northwest for accreditation.

C. Accreditation shall take place under the direction of AdvancED Northwest.

R277-410-7. Junior High and Middle School Accreditation.

A. Junior high and middle schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah middle schools is optional; interested middle schools may apply to AdvancED Northwest for accreditation.

C. Public junior high and middle schools that include grade 9 shall be members of AdvancED Northwest and be visited and assigned status by AdvancED Northwest.

D. The AdvancED Northwest accreditation standards provided in this rule are applicable to a junior high or middle school in the school's entirety if the school includes grade 9 consistent with R277-410-6C.

R277-410-8. Board Accreditation Standards.

A. Board accreditation standards include AdvancED Standards for Quality Schools and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.

B. Utah-specific assurances include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific assurances are available from the USOE Teaching and Learning Section.

R277-410-9. Transfer or Acceptance of Credit.

A. Utah public schools shall accept transfer credits from accredited secondary schools consistent with R277-705-3.

B. Utah public schools may accept transfer credits from other credit sources consistent with R277-705-3.

KEY: accreditation, public schools, nonpublic schools
August 26, 2015 Art X Sec 3
Notice of Continuation June 6, 2017 53A-1-402(1)(c)
53A-1-401(3)

R277. Education, Administration.
R277-460. Distribution of Substance Abuse Prevention Account.
R277-460-1. Definitions.

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

B. "Educational materials" means visual and auditory media, curricula, textbooks, and other disposable or non-disposable items that enhance student understanding of the subject matter.

C. "Evaluation" means a review by a person or group which assesses procedures, results and products specific to a program.

D. "Local Substance Abuse Authority" means the person or group designated by the Legislature as the county authority to receive public funds for substance abuse prevention and treatment.

E. "Prevention education" means proactive educational activities designed to eliminate any illegal use of controlled substances.

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

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

H. "Utah Substance Abuse Prevention Guiding Principles" means criteria established by the Utah Division of Substance Abuse and Mental Health to be used in selecting or developing substance abuse prevention materials.

R277-460-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-13-102 which directs the Board to adopt rules providing for instruction on the harmful effects of controlled substances and by Section 51-9-405 which provides for funds from the Substance Abuse Prevention Account to be allocated to the USOE for:

(1) substance abuse prevention and education;

(2) substance abuse prevention training for teachers and administrators; and

(3) school district, charter school or consortia programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

B. The purpose of this rule is to provide for the distribution of the USOE's share of the Substance Abuse Prevention Account.

R277-460-3. Fund Allocations.

A. The USOE shall retain sufficient funds to pay for the salary, benefits and indirect costs of a .5 FTE Program Administrator at a salary level to be determined by the Board.

B. The remaining funds shall be allocated as follows:

(1) An amount not to exceed fifteen percent shall remain at the USOE to purchase educational materials to support and supplement existing Utah's Substance Abuse Prevention Program, Prevention Dimensions.

(2) An amount not to exceed fifteen percent shall remain at the USOE to encourage and support statewide substance abuse prevention training for school district/charter school teachers and administrators.

(3) An amount not to exceed fifteen percent shall remain at the USOE to promote Utah's Substance Abuse Prevention Program and encourage its classroom use by Utah educators.

(4) A minimum of fifty-five percent shall be distributed to school districts, charter schools or consortia for use by the school district, individual schools, charter schools or consortia in a cooperative substance abuse prevention effort based on application.

R277-460-4. Applications.

A. Applications shall be provided by the USOE.

B. School districts, charter schools or consortia shall submit applications to the specialist designated by the USOE.

C. The USOE specialist shall make funding recommendations to the USOE Finance Committee as soon as reasonably possible after the application deadline.

D. Awards per school districts, charter schools or consortia shall be based on funds available and specific funding amounts shall be provided in the USOE application.

E. Only applications for funding that propose projects or programs consistent with the Utah Substance Abuse Prevention Guiding Principles shall be considered for funding.

(1) Applications shall address the following:

(a) the applicant's intention to collaborate with the local substance abuse authority and community groups within the school district, including shared plans and strategies for activities and intervention;

(b) the applicant's plan for professional development and teachers' use of Prevention Dimensions materials within their classrooms;

(c) the use of funds to implement applicant's plan;

(d) teacher reports of classroom implementation and plans for classroom monitoring visits;

(e) applicant's enhancement of Prevention Dimensions with additional substance abuse activities and strategies; and

(f) applicant's implementation of Prevention Dimensions with school-based behavioral/health or coordinated school health initiatives.

F. Projects receiving funding shall be notified of funding approval by the USOE Finance Committee.

R277-460-5. Limitations on Funds.

A. Funds shall be used by the USOE, school districts, charter schools and consortia exclusively for purposes set forth in Section 51-9-405.

B. Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the USOE.

C. Funds received by school districts, charter schools or consortia shall not be used to supplant either currently available school district or charter school funds or funds available from other state or local sources.

R277-460-6. Evaluation and Reports.

A. An applicant that accepts a USOE Substance Abuse Prevention award shall provide the USOE with a year-end evaluation report before July 1 of the fiscal year in which the award was made.

B. The year-end report shall include:

(1) an expenditure report;

(2) a narrative description of activities funded; and

(3) copies of all products and materials developed with USOE Substance Abuse Prevention funds.

C. The USOE may require additional evaluation or audit procedures from an award recipient to demonstrate the use of funds consistent with the law and Board rules.

R277-460-7. Waivers.

The Superintendent may grant a written request for a waiver of a requirement or deadline which a school district, charter school or consortia finds unduly restrictive.

KEY: public schools, substance abuse prevention
October 11, 2011 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53A-13-102**
51-9-405

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. Definitions.

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

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

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

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information;
(6) completion of employee background checks; and
(7) a record of disciplinary action taken against the educator.

E. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

F. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated to submit data to the U.S. Department of Education.

G. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

H. "LEA" means 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. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

J. "MST" means Mountain Standard Time.

K. "Schools interoperability framework (SIF)" means an open global standard for seamless, real time data transfer and usage for Utah public schools.

L. "Student information system (SIS)" means a student data collection system used for Utah public schools.

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

N. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the USOE, and allows 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.

O. "Year" means both the school year and the fiscal year for LEAs in Utah, which runs from July 1 through June 30.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

R277-484-3. Deadlines for Data Submission.

For the purpose of submission of student level data, each Utah LEA shall participate in UTREx. LEAs shall submit data to the USOE as directed by the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;
(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 1

(1) Fire Drill Compliance Statement - for prior year;
(2) Other Emergency (Earthquake and School Violence) Drills Compliance Statement - for prior year;
(3) Emergency Preparedness Compliance Statement - for prior year;
(4) Emergency Response Plan - for prior year.

E. July 7 - UTREx - final comprehensive update for prior year.

F. July 15

(1) Adult Education - final report for prior year;
(2) Classified Personnel Report - for prior year;
(3) Driver Education Report - for prior year;
(4) ESEA Choice and Supplemental Services Report - for prior year;
(5) Fee Waivers Report - for prior year;
(6) Home Schooled Students Report - for prior year;
(7) Teacher Benefits Report - for prior year;
(8) Pupil Transportation Statistics - for prior year:
(a) Bus Inventory Report;
(b) Year End Pupil Transportation Statistics Reports;
(9) Copy of local school board-adopted budget - for next fiscal year, unless the local school board provides documentation of planned truth-in-taxation process.

G. August 15 - copy of the local school board-adopted budget - for next fiscal year, if the local school board provides documentation of planned truth-in-taxation process.

H. September 15

(1) Membership Audit Report - for prior year;
(2) Adult Education - Financial Audit for prior year.

I. October 1

(1) Annual Financial Report (AFR) - for prior year;
(2) Annual Program Report (APR) - for prior year;
(3) Annual assurance letter required for compliance information and documentation for identified programs and funds, pursuant to R277-108.

J. Seven business days after October 1 - UTREx - complete update required as of October 1 for current year.

K. October 15 - UTREx - revised update as of October 1 for current year, if significant errors are identified by the USOE or the LEA.

L. November 1

(1) Enrollment and Transfer Student Documentation Audit Report - for current year;
(2) Immunization Status Report - for current year;
(3) Pupil Transportation Statistics for state funding:
(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;
(b) Schedule B (Miscellaneous Expenditure Report) - for prior year;
(4) Negotiations report - for current year.

M. November 15

(1) CACTUS - update for current year; and

(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

N. November 30 - Financial Audit Report - for prior year.

O. Seven business days after December 1 - UTREx - complete update required as of December 1 for current year.

P. December 15 - Bus Driver Credentials Report - for current year.

M. December 15 - UTREx - revised update as of December 1 for current year if significant errors are identified by the USOE or the LEA.

R277-484-4. Adjustments to Deadlines.

A. Deadlines in R277-484 that fall on a weekend or state holiday in a given year shall be moved to the first workday after the date specified for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate information to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE Director of School Finance at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) for the extension request;

(2) The signatures of the LEA business administrator and LEA superintendent/director; and

(3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE Director of School Finance shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the need for the data to be submitted; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it to the USOE Associate Superintendent for Business and Operations for a final decision on whether or not to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the designated date, the MSP fund transfer process shall be stopped and the procedure described in Section 8 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

(1) CACTUS Update:

(a) June 29;

(b) November 15.

(2) UTREx Update:

(a) July 7 UTREx - final comprehensive update for prior year;

(b) Seven business days after October 1 UTREx - complete update required as of October 1;

(c) October 15 UTREx - revised update as of October 1;

(d) Seven business days after December 1 UTREx - complete update required as of December 1;

(e) December 15 UTREx - revised update as of December 15.

R277-484-5. Official Data Source and Required LEA Compatibility.

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3-602.5;

(2) determination of adequate yearly progress as required under the Utah Comprehensive Accountability System (UCAS); and

(3) submission of data files to the U.S. Department of Education via EDEN.

C. LEAs shall use a USOE-approved SIS to ensure compatibility with USOE data collection systems. The USOE maintains a list of approved student information systems.

(1) Prior to the USOE granting approval for an LEA to initiate or replace a student information system that was not previously approved, the LEA shall comply with the following:

(a) LEA shall send written request for approval to USOE's Director of Information Technology;

(b) LEA shall submit documentation to the USOE that the new or modified student information system is School Interoperability Framework (SIF) certified;

(c) LEA shall submit documentation to the USOE that a SIF agent can meet the UTREx specifications profile for Vertical Reporting Framework (VRF), and eTranscripts;

(d) LEA shall ensure that a new student information system can generate valid data collection by submitting an actual file to the USOE for review;

(e) LEA shall ensure that the new student information system can generate the Statewide Student Identifier (SSID) request file by submitting an actual file to the USOE for review.

(2) The USOE shall review documentation and grant or deny requests within 30 calendar days.

(3) LEA requests and approval shall be completed by January 15 of the school year prior to the year the LEA proposes to use the software for production data. Approved replacement systems shall run in parallel for a period of at least three months to a state-approved system and be able to generate duplicate reports to previously generated information.

D. No later than October 1, 2013, all public education LEAs shall begin submitting daily updates to the USOE Clearinghouse using all School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification. Noncompliance with this requirement may result in interruption of MSP funds consistent with R277-484-8.

E. All public high school transcripts requested by public education post-secondary schools shall be electronically submitted to those public education post-secondary schools if the post-secondary schools are capable of receiving transcripts through the electronic transcript service designated by the USOE. This process is mandatory for all public high schools as of October 1, 2013.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance Section shall publish by June 30 annually on its website a description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when a USOE audit report review team agrees that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within 60 working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

A. If an LEA fails to submit a report by its deadline as specified in Section 3, consistent with procedures outlined in R277-114, the USOE shall stop the MSP fund transfer process

on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 4, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) appropriately inform the Board at its next regularly scheduled meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

KEY: data standards, reports, deadlines
August 7, 2013 Art X Sec 3
Notice of Continuation June 6, 2017 53A-1-401(3)
53A-1-301(3)(d) and (e)

R277. Education, Administration.
R277-485. Loss of Enrollment.
R277-485-1. Definitions.

A. "ADM" means average daily membership derived from end-of-year data.

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

C. "Carryforward balance" means the unspent amount of MSP Uniform School Fund monies from the previous fiscal year.

D. "Historical Mean ADM" means the mean of the two highest ADM in the three years preceding the prior year.

E. "Local Effort" means the prior year sum of tax rates imposed by the local school board.

F. "Lost ADM" means the difference between prior year ADM and Historical Mean ADM.

G. "Mid-year update" means the annual Minimum School Program allocation report prepared by the USOE and provided after January 1 annually.

H. "Minimum School Program (MSP)" means the state supported Minimum School Program as defined in 53A-17a.

I. "Weighted Pupil Unit (WPU)" means the unit of measure of factors that is computed in accordance with the MSP for the purpose of determining the costs of a program on a uniform basis for each district.

R277-485-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-139 which allows the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond its control.

B. The purpose of this rule is to compensate a school district financially for an excessive loss in student enrollment due to factors beyond its control.

R277-485-3. Eligibility.

A. A school district shall be eligible for funding if the district's lost ADM is at least four percent less than the district's historical mean ADM.

B. Charter schools are not eligible for funding under this rule.

R277-485-4. Funding.

A. The source of funding to the district shall be the current unencumbered MSP carryforward balance. This rule shall provide funds to school districts only after all other authorized uses of the carryforward balance have been carried out.

B. The total amount of funds made available for distribution shall be equal to the lesser of:

(1) the sum of lost ADM in eligible districts multiplied by 25 percent of the current year value of the WPU; or

(2) 25 percent of the current unencumbered MSP carryforward balance.

C. Available funds shall be distributed proportional to lost ADM (90 percent) and prior year local effort (10 percent) among eligible districts.

D. If there are not any current year unencumbered MSP funds, eligible districts shall not be funded.

R277-485-5. Implementation.

Funds shall be distributed annually in one lump sum with the mid-year update of the current year MSP.

KEY: student, enrollment
May 8, 2012 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53A-17a-139**

R277. Education, Administration.
R277-488. Critical Languages Program.
R277-488-1. Definitions.

A. "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is an oral test, offered at most Utah colleges and universities.

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

C. "Credentialed international teacher" means a teacher sponsored under a separate Memoranda of Understanding between the USOE and China, Spain, Mexico, France or Taiwan. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memoranda of Understanding prior to working with Utah students.

D. "Critical languages" means those languages described under Section 53A-15-104(1).

E. "Critical Languages Program" means the program described under Section 53A-15-104.

F. "Dual language immersion" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.

G. Dual language immersion instructional models are:

(1) "One-way" immersion is a program in which a student population consists of English language speakers with limited to no proficiency in the foreign immersion language. In such a model, less than 30 percent of the students have a native language other than English.

(2) "Two-way" immersion is a program in which a student population consists of a majority of English language speakers and a minority of language speakers other than English with dominance in their first language and home language support for this language. A 1:1 ratio is ideally maintained for these two language groups, but a minimum of one-third of each language group (such as 2:1 ratio) is required.

H. "Secondary school" means grades 7-12 in whatever schools the grade levels exist.

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

R277-488-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-104 which directs the State Superintendent of Public Instruction and the Board to track, monitor, and may expand the Critical Languages Program and dual immersion programs subject to student interest and available funding, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing funds to secondary schools participating in the Critical Languages Program and funds to elementary schools participating in the Dual Language Program. The intent of this appropriation is to increase the number of students who reach proficiency in a critical language as well as build overall foreign language capacity in the state of Utah and to increase the number of biliterate and bilingual students.

R277-488-3. Critical Language Program Requirements.

A. A secondary school that desires to offer critical languages (traditional instruction or visiting guest teacher program) shall submit an application, provided by the USOE and available each April 1 to the USOE no later than May 1.

B. The application shall designate:

(1) the name of the school district or charter school;

(2) a plan and procedure to notify students and parents of the names of the critical language(s) that will support the dual language immersion continuation into secondary schools consistent with Section 53A-15-104(1);

(3) requirements for the visiting guest teacher exchange program:

(a) programs shall operate under a Memorandum of Understanding between the USOE and the country providing qualified guest teachers;

(b) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding;

(c) all other conditions provided by individual Memoranda of Understanding shall be satisfied.

C. Schools applying for either the traditional instruction or the visiting guest teacher program shall use materials identified and recommended by the USOE including texts and consumables, purchased with funds appropriated by the Legislature.

R277-488-4. Dual Language Immersion Program Requirements.

A. The program shall provide funds July 1 of each fiscal year the Legislature continues to provide funding for the program. The Dual Language Immersion programs shall support the following foreign languages:

(1) Chinese;

(2) French;

(3) Portuguese; and

(4) Spanish.

B. An elementary school that desires to participate in the Dual Language Immersion Program shall submit an application, provided by the USOE and available annually by April 14 to the USOE by May 14.

C. The application shall provide for an immersion model that uses 50 percent of instruction in English and 50 percent of instruction in another language including:

(1) an identified, instructional model (one-way or two-way), and language choice (Chinese, French, Portuguese or Spanish);

(2) beginning the instructional model in kindergarten, grade 1 or both, and adding an additional grade each year; and

(3) a plan and procedure in place to notify students and parents of the availability of at least one dual language immersion course identified in Section 53A-15-104(1).

D. Priority in funding shall be given to schools in school districts or charter schools that do not currently teach the requested language choice; and

(a) demonstrate adequate local funding and infrastructure to begin a program or expand existing programs;

(b) demonstrate community interest and students committed and prepared to participate in a new or expanded program, including prepared instructors for the program;

(c) have adequate interest, resources, and infrastructure, but do not presently have a program under R277-488;

(d) have a demonstrated community need for improved or expanded foreign language instruction in a specific school or community; and

(e) allow language programs to include all languages identified in Section 53A-15-105.

E. Schools shall hire qualified language teachers who:

(1) have a world language endorsement in the language of instruction (Chinese, French, Portuguese or Spanish for a one-way dual language immersion program and a Dual Language Immersion endorsement in the language of instruction (Chinese, French, Portuguese or Spanish for both a one-way and two-way dual language immersion program;

(2) are Utah licensed elementary or secondary educators; and

(3) have completed a criminal background check, including review of identified offenses by the USOE.

R277-488-5. USOE Responsibilities and Funds.

A. Applications for the expanded Critical Languages Program and Dual Immersion Program shall be provided by the

USOE.

B. Secondary and elementary schools shall be selected for funding for both programs based on an evaluation of applications by a USOE-designated committee which shall include statewide experts.

C. Awards shall be made to individual schools and funds allocated to school districts and charter schools to be fully distributed to designated schools.

D. Each secondary school selected for funding shall receive a base allocation per critical language offered at the school, designated in Section 53A-15-104(6)(a).

E. Each elementary school selected for funding shall receive a base allocation per dual language immersion offered at the elementary school, designated in Section 53A-15-104(6)(a).

F. New schools eligible for funding shall be notified by the USOE by June 1 annually and shall receive funds in the subsequent fiscal year.

R277-488-6. Evaluation and Reports.

A. Each school selected for funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-104.

B. The USOE may request additional data from secondary or elementary schools that receive funding.

KEY: critical languages, dual language immersion

August 8, 2012 Art X Sec 3

Notice of Continuation June 6, 2017 53A-15-104

53A-1-401(3)

R277. Education, Administration.
R277-489. Early Intervention Program.
R277-489-1. Definitions.

A. "Adaptive learning technology and assessments" means technology tools and software that adjust the presentation of educational material according to students' weaknesses and strengths, as indicated by student responses to questions.

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

C. "Early intervention program" means a program that provides additional instruction to kindergarten age students either as an extended period before or after school, on Saturdays, during the summer, or through other means.

D. "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.

E. "Kindergarten readiness assessment" means an assessment based on research and data that determines a child's readiness to begin kindergarten, as determined by the school district or charter school.

F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

G. "LEA plan" means the Early Intervention Program plan submitted by LEAs and approved and accepted for funding by the Board.

H. "Program" means the Early Intervention Program.

I. "Student learning gains" means the score a student obtains by comparing performance on a pre-test at the beginning of an intervention to the performance on a post-test at the end of an intervention (post-test score minus pre-test score equals learning gains score).

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

R277-489-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and by Section 53A-17a-167 which directs the Board to distribute funds appropriated for the Early Intervention Program, consistent with state law, to LEAs that apply for the funds.

B. The purpose of this rule is to establish criteria and procedures for application and reporting procedures to administer the early intervention program.

R277-489-3. Board/USOE Responsibilities.

A. The Board shall accept applications from LEAs for Early Intervention Programs delivered through enhanced kindergarten programs that satisfy the requirements of Section 53A-17a-167 and the provisions of this rule.

(1) The USOE shall accept applications annually beginning on June 1 for the 2012-2013 school year and April 1 in subsequent years and closing as determined by the USOE.

(2) The Board shall select charter schools with the greatest need for an enhanced kindergarten program in consultation with the State Charter School Board.

(3) The Board shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Section 53A-17a-167(4)(a).

(4) The Board shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

(5) All funds shall be distributed consistent with USOE established timelines.

(6) The USOE shall require pre and post-assessments from all funded programs and year-end data.

(7) The USOE shall require year-end data and a report from funded programs.

B. The Board shall select one or more technology providers through an RFP to provide adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

(1) The USOE shall accept applications from LEAs for grants to be used to purchase Board-selected adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

(2) A school district or charter school that received a license for an adaptive learning technology in a previous school year shall be given priority to receive an equivalent license in subsequent years.

(3) The USOE shall require pre and post-assessments from all participating LEAs.

(4) The USOE shall require an annual report from all participating LEAs that assesses the impact of the adaptive learning technology and assessments or adaptive computer program for literacy instruction used by the LEA, including final testing data and student learning gain scores.

(5) The Board shall report final testing data and student learning scores regarding adaptive learning technology and assessments or adaptive computer program for literacy instruction on or before November 1, 2012 and every year thereafter to the Education Interim Committee and the Governor.

R277-489-4. LEA Responsibilities.

A. LEA applications for Early Intervention Programs shall include:

(1) names of schools for which Program funds shall be used;

(2) a description of the delivery method or methods that shall be used to serve eligible students (such as full-day kindergarten, two half-days, extra hours, summer program, or other means);

(3) a description of the evidence-based early intervention model used by the LEA;

(4) a description of how the program shall focus on age-appropriate literacy and numeracy skills;

(5) a description of how the program shall be targeted to at-risk students;

(6) a description of the assessment procedures and tools that shall be used by participating schools within the LEA; and

(7) other information as requested by the USOE.

B. LEAs may apply for grants for Board-selected adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

(1) LEA adaptive learning technology and assessments grant recipients shall use a pre-test before using the technology tools and software with early intervention kindergarten students and shall administer a post-test at the end of the year.

(2) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive learning technology.

(3) LEA adaptive computer program for literacy instruction for early grade interventions grant recipients shall use a pre-test before using the technology tools and software with early intervention students in kindergarten through first grade and shall administer a post-test at the end of the year.

(4) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive computer program for literacy instruction for early grade interventions.

C. LEAs that fail to provide complete and accurate data and reports as requested shall not receive Program funding in subsequent years.

D. An LEA may not require a student to participate in an early intervention program.

R277-489-5. Assessment, Accountability and Reporting.

A. LEAs shall use a self-selected kindergarten pre-assessment with all kindergarten students:

(1) The days used for assessment shall be consistent with R277-419-7, Pupil Accounting.

(2) The USOE may provide a model kindergarten assessment from a list of appropriate assessments.

(3) Post assessments shall be completed by LEAs prior to the ending of the school year and reported to the Board as soon as reasonably possible.

(4) Post assessment results for all kindergarten students shall provide evidence of student learning matched to the program's pre-assessments used for program placement.

B. LEAs that fail to provide complete, accurate and timely reports may not receive funding in subsequent years.

KEY: early intervention
August 7, 2013 Art X Sec 3
Notice of Continuation June 6, 2017 53A-17a-167

R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-1. Definitions.

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

B. "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

C. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

D. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

E. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.

F. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

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

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

I. "Level 2 license" means a Utah professional educator license issued after:

(1) satisfaction of all requirements for a Level 1 license;

(2) 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;

(3) 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; and

(4) satisfaction of additional requirements established by law or rule.

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

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

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

M. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

N. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

O. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

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

R277-520-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Required Licensing.

A. All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

B. LEAs shall receive assistance from the USOE to the extent of resources available to have all teachers fully licensed.

C. LEAs are expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed. Failure to ensure that an educator has appropriate licensure may result in the USOE withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Section 53A-17a-107(2) and R277-486 until teachers are appropriately licensed pursuant to the Board's authority under Section 53A-1-401(3).

R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An educator assigned to teach a class in kindergarten through grade 3 shall hold:

(1) a current Utah Educator License with an early childhood (k-3) license area of concentration;

(2) an elementary (k-6) license area of concentration; or

(3) for an educator assigned to teach a class in grade 1 through grade 3, an elementary (1-8) license area of concentration.

B. An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current Utah Educator License with an elementary (k-6) or an elementary (1-8) license area of concentration.

C. An elementary content specialist in Fine Arts or Physical Education shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate K-12 content endorsement.

D. An elementary content specialist in reading or English as a Second Language shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate subject/content endorsement.

E. An educator assigned to teach a class in grade 6 through grade 8, including middle-level, intermediate, and junior high schools, shall hold a current Utah Educator License with an elementary (1-8) or a secondary (6-12) license area of concentration with the appropriate subject/content endorsement for all assigned courses.

F. An educator assigned to teach a class in grade 9 through grade 12 shall hold a current Utah Educator License with a secondary (6-12) or a career and technical education license area of concentration with the appropriate subject/content endorsement for all assigned courses.

G. An educator assigned to serve or teach a class of students with disabilities shall hold a current Utah Educator License with a special education (k-12) license area of concentration and, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate subject/content endorsement.

H. An educator assigned to serve preschool-aged students with disabilities shall hold a current Utah Educator License with a preschool special education (birth-age 5) license area of concentration.

I. An educator assigned to provide student support services as defined in R277-506 shall hold a current Utah Educator License with the appropriate support service license area of concentration.

J. An educator assigned as a school-based or LEA-based specialist shall hold a current Utah Educator License with the appropriate license area of concentration and endorsement as defined by the LEA.

K. An educator assigned in an administrative position requiring an educator license, as defined by the district, shall hold a current Utah Educator License and an administrative/supervisory (k-12) license area of concentration.

(1) A superintendent of a school district may be licensed with a letter of authorization granted by the Board consistent with Section 53A-3-301.

(2) An educator assigned in an administrative position in a charter schools is exempt from this requirement consistent with Section 53A-1a-511.

R277-520-5. Eminence.

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1F, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load except as provided in R277-520-5C.

C. In identified circumstances, teachers with an eminence authorization may teach more than 37 percent of the regular instructional load. An eminence authorization may be approved by the Board if:

(1) the LEA can find no other qualified individual to fill the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

(i) description;

(ii) recruitment efforts;

(iii) the qualifications of all applicants; and

(iv) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or

(2) An individual has exceptional skills, expertise, and experience that make him the primary candidate for the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

(i) information about the position;

(ii) the individual's expertise, and experience; and

(iii) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.

D. LEAs shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the LEA.

E. The LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. An LEA that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

R277-520-6. Routes to Appropriate Endorsements for Teachers.

A. An educator may add an endorsement to an existing license area of concentration by completing the endorsement requirements established by the USOE.

B. Endorsement requirements in core academic subject areas shall include passage of the Board-approved content knowledge assessment.

C. Teachers may demonstrate competency in the subject area(s) of their teaching assignment(s) as approved by the USOE content area specialist to meet specific endorsement requirements except the Board-approved content knowledge assessment.

D. Educators shall be properly endorsed consistent with R277-520-3 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds pursuant to the Board's authority under Section 53A-1-401(3).

R277-520-7. Board-Approved Endorsement Program (SAEP).

A. An educator assigned to teach in a subject for which he does not hold the appropriate endorsement and who has successfully completed at least nine semester credit hours of the endorsement requirements shall be placed on an SAEP as determined by USOE specialists.

B. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

C. An SAEP may be granted for one two-year period and

may be extended by the USOE for up to two additional years if the individual has made progress towards completing the SAEP.

D. An individual currently participating in an SAEP is considered to hold the endorsement for the purposes of meeting the requirements of R277-520-4.

R277-520-8. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula pursuant to the Board's authority under Section 53A-1-401(3).

KEY: educators, licenses, assignments
July 8, 2015 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53A-1-401(3)**
53A-6-104(2)(a)

R277. Education, Administration.
R277-733. Adult Education Programs.
R277-733-1. Definitions.

A. "Adult" means an individual 18 years of age or over.

B. "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs, provided by LEAs or nonprofit organizations affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah who are out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school, to improve their literacy levels and to further their high school level education.

C. "Adult Basic Education (ABE)" means a program of instruction below the 9.0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:

(1) increasing their independence;

(2) improving their ability to benefit from occupational training;

(3) increasing opportunities for more productive and profitable employment; and

(4) making them better able to meet adult responsibilities.

D. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.

E. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

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

G. "Community-Based Organization (CBO)" means a nonprofit organization:

(1) eligible for and accepting federal AEFLA funds; and

(2) for the sole purpose of providing adult education services to qualified adult education learners.

(3) All rules and laws that apply to LEAs shall also apply to CBOs that receive adult education funding.

(4) CBOs:

(a) apply to the USOE;

(b) receive adult education funding through a competitive process; and

(c) receive USOE funding on a reimbursement basis only.

H. "Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other similar personal items for which a student retains ownership during the course of study.

I. "Desk monitoring" means the review of UTopia data to ensure program integrity.

J. "Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:

(1) is 17 years of age or older, and whose high school class has graduated; or

(2) is under 18 years of age and is married; or

(3) has been adjudicated as an adult; or

(4) is an out-of-school youth 16 years of age or older who has not graduated from high school.

K. "Enrollee" means an adult student who has 12 or more contact hours in an adult education program during a fiscal/program year, an academic assessment establishing an Entering Functioning Level, has an adult education Student Education Occupation Plan (SEOP) with an established goal, and a defined funding code. Enrollee status is based on the last date that all of the above items are entered into UTopia.

L. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

M. "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program. All fees are subject to approval by the local school board of education or local board of trustees.

N. "General Educational Development (GED) preparation" means a program that provides instruction in five specific subject areas for eligible adult education students who seek a Utah High School Completion Diploma by successfully passing all five GED Tests.

O. "General Educational Development (GED) Testing" means the test required under R277-702.

P. "LEA" means a local education agency, including local school boards and public school districts.

Q. "Measurable outcomes" means indicators of student achievement in adult education programs used for state funding purposes. These outcomes are described in R277-733-10.

R. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.

S. "Other eligible adult education student" means an individual 16 to 19 years of age whose high school class has not graduated and is counted in the regular school program who receives instruction in both a traditional and adult education program. The funds generated, weighted pupil unit (WPU) and collected fees, are pro-rated and credited to the adult education program for attendance in an adult education program.

T. "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.

U. "Participant" means an adult education student who does not meet the qualifications of an adult education enrollee.

V. "Student education/occupation plan" or "SEOP," for purposes of adult education and this rule, means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:

(1) is initiated at the entrance into an adult education program;

(2) identifies a student's skills and objectives;

(3) maps out a strategy to guide a student's course selection; and

(4) links a student to post-secondary options, including higher education and careers through a transition process defined by the adult education program.

W. "Teachers of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.

X. "Tuition" means the base cost of an adult education program that provides services to adult education students.

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

Z. "Utah High School Completion Diploma" is a diploma issued by the Board and distributed by the GED Testing Centers as agents of the Board to an individual who passes all five subject areas of the GED Tests at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience.

AA. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.

BB. "Waiver release form" means a form signed by an

adult education student allowing for release of the student's personal data and student education occupation plan, including social security number and GED scores, for data matching purposes with agencies such as the Department of Workforce Services, higher education, Utah State Office of Rehabilitation and GED Scoring Services. Signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training or career planning, or other purposes.

R277-733-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, Section 53A-15-401 which places the general control and supervision of adult education under the Board, Section 53A-1-402(1) which allows the Board to adopt minimum standards for programs and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities. Additionally, the Board and Board of Regents are directed to provide adult education programs to inmates under Section 53A-1-403.5.

B. The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

R277-733-3. Federal Adult Education.

The Board adopts the Adult Education and Family Literacy Act (AEFLA), Title II of the Workforce Investment Act (WIA), Public Law 105-220, 20 U.S.C. 1201 et seq., hereby incorporated by reference, and the related current state plan required under that statute, as the standards and procedures governing both federal and state funding of adult education programs, administered by the USOE.

R277-733-4. Program Standards.

A. Adult education programs shall comply with state and federal requirements and Board rules and follow procedures as defined in the Utah Adult Education Policy and Procedures Guide published, updated, and available from the USOE.

B. Adult education programs shall make reasonable efforts to market and inform prospective students within their geographic areas of the availability of the programs and provide enrollment information.

C. Utah adult education services may be offered to qualifying individuals whose primary residence is located in communities closely bordering Utah not conducive to commuting to the bordering state's closest adult education program. These individuals shall not be charged out-of-state Adult Education tuition.

D. Adult education programs shall make reasonable efforts to schedule classes at sites and times that meet the needs of adult education students.

E. Each eligible adult education student shall have a written Student Education Occupation Plan (SEOP) defining the student's goal(s) based upon a complete academic assessment, prior academic achievement, work experience and an established Entering Functioning Level. Annually, the plan shall be reviewed by the student and a designated program official and maintained in the student's file along with a signed data matching/agency sharing waiver release form.

F. Only courses identified in R277-733-8 shall be taught by adult education staff.

G. Adult education programs shall establish and maintain a local adult education advisory committee consisting of representation from the Utah Department of Workforce Services, Vocational Office of Rehabilitation, higher education and other interested community members with the responsibility to advocate for exemplary adult education programs through collaboration and partnerships with businesses and other community agencies.

H. The USOE shall evaluate programs through tri-annual site monitoring visits, monthly desk monitoring, and as needed, additional site visits or both, to assure compliance.

I. Education staff, including program administrators, shall be qualified and appropriate for their assignments.

J. The teaching certificate and endorsement held by a staff member of an LEA or community-based program shall be important in evaluating the appropriateness of the teacher's assignment, but not controlling. For instance, elementary teachers may teach adult students who are performing academically at an elementary level in certain subjects. Individuals teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects. Non-licensed individuals providing instruction in ESOL, ABE, GED Test preparation or AHSC classes shall instruct under the supervision of a licensed program employee.

K. Individuals with post-secondary degrees not in possession of a Utah teaching license may be considered for employment solely in an adult education program teaching adult students by obtaining an Alternative Route to License as defined in R277-518, Career and Technical Education Licenses.

L. An individual who has TESOL or ESOL credentials in lieu of a Utah teaching license may be considered for employment solely in an adult education community-based program funded to provide ESL services.

R277-733-5. Fiscal Procedures.

A. State funds appropriated for adult education are allocated in accordance with Section 53A-17a-119.

B. No eligible LEA shall receive less than its portion of an eight percent base amount of the state appropriation if:

(1) instructional services approved by the USOE have been provided to eligible adult students during the preceding fiscal year; or

(2) the LEA is preparing to offer such services--such a preparation period may not exceed two years.

C. Lapsing and nonlapsing funds

(1) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules and policies.

(2) Ten percent or $50,000, whichever is less, of state adult education funds allocated to LEA adult education programs not expended in the current fiscal year may be carried over and spent in the next fiscal year with written approval by the USOE.

(3) A request to carry over funds shall be submitted for approval by August 1 annually. Approved carryover amounts shall be detailed in a revised budget submitted to the adult education coordinator no later than October 1 in the year requested.

(4) Excess funds may be considered in determining the LEA's allocation for the next fiscal year.

(5) Annually, fund balances in excess of 10 percent or $50,000 shall be recaptured by the USOE no later than February 1 and reallocated to LEA adult education programs through the supplemental award process based on need and effort as determined by the Board consistent with Section 53A-17a-119(3).

D. The USOE shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern the state (legislative) and federal AEFLA adult education funded programs. The Utah Adult Education Policy and Procedures Guide (updated annually) including forms, procedures and guidelines is available on the USOE adult

education website.

R277-733-6. Adult Education Program Student Eligibility.

A. An individual is eligible to be a Utah adult education student if

(1) the prospective adult education student is at least 16 years of age and the student's class has not graduated; or

(2) a prospective adult education student who is otherwise eligible provides proof of Utah residency as defined in adult education policy.

B. The following does not establish residency for purposes of adult education programs:

(1) mail addressed to occupant or resident;

(2) letters from friends or relatives;

(3) power of attorney documents;

(4) personal correspondence addressed to a post office box.

C. To be eligible for participation in an adult education program, a Utah resident shall be:

(1) an individual 17 years of age or older whose high school class/cohort has graduated; or

(2) an individual emancipated under Section 78-3a-1005; or

(3) an individual emancipated by marriage; or

(4) an individual who is at least 16 years of age who has not graduated from high school and who is no longer enrolled in a K-12 program of instruction; or

(5) a student 16 to 19 years of age whose class has not graduated and who is attending adult education classes as an alternative to a traditional public education program.

D. Non-Utah residents from states bordering Utah seeking enrollment into an adult education program in Utah shall be considered resident Utah students consistent with individual agreements between the Utah Adult Education Program and the individual states bordering Utah.

R277-733-7. Adult Education Pupil Accounting.

A. An LEA administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil (with part-time enrollment pro-rated by the LEA) for a student who is a resident of a Utah school district who meets the following criteria:

(1) is at least 16 years of age but less than 19 years of age;

(2) who has not received a high school diploma or a Utah High School Completion Diploma;

(3) who intends to graduate from a K-12 high school; and

(4) who attends an SEOP meeting with his school counselor, school administrator/designee, parent/legal guardian to discuss the appropriateness of the student's participation in adult education; or

(5) A student 17 years of age or older, without a high school diploma but whose high school class has graduated, who is a Utah resident, and who intends to graduate from a K-12 high school, may, with parental/guardian consultation and written approval from all parties (if applicable), enroll in the state administered adult education program upon proof of Utah residency. Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

B. The clock hours of students enrolled part-time shall be prorated.

C. As an alternative, equivalent WPUs may be generated for competencies mastered on the basis of prior authorization of a school district plan by the USOE.

D. For purposes of funding in an adult education program, a student can only be a pupil in average daily membership once on any day. If the student's day is part-time in the regular school program and part-time in the adult education program, the student's membership shall be reported on a prorated basis for each program. A student may not be funded for more than one regular WPU for any school year.

E. An out-of-school youth (minimum age of 16) who has not graduated from high school, may, with parental/guardian written approval (if applicable), school district administrative written approval and proof of Utah residency, enroll in an adult education program:

(1) The WPU shall not be generated by the student's participation in an adult education program.

(2) This student shall be eligible for adult education state funding.

(3) This student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision including the following:

(a) The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the adult education program; or

(b) The student may earn a Utah High School Completion Diploma upon successful passing of all five GED Tests; or

(c) The student may, at the discretion of the LEA, return to his regular high school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional K-12 diploma shall be completed, provided that the student:

(i) is released from the adult education program; and

(ii) has not completed the requirements necessary for an Adult Education Secondary Diploma; or

(iii) has not successfully passed all five GED Tests and has not received a Utah High School Completion Diploma.

(4) An out-of-school youth of school age who has received an Adult Education Secondary Diploma is not eligible to return to a K-12 high school.

(5) An out-of-school youth of school age who has received a Utah High School Completion Diploma is not eligible to return to a K-12 high school unless it is required for the provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Chapter 33.

(6) An out-of-school youth of school age who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma shall be reported as a graduate for K-12 graduation (AYP) outcomes.

(7) An out-of-school youth of school age may be considered eligible to take the GED Test if all requirements as stated in R277-702, Procedures for Utah General Educational Development Certificate, are followed.

R277-733-8. Program, Curriculum, Outcomes and Student Mastery.

A. The Utah Adult Education Program shall offer courses consistent with the Utah Core curriculum under R277-700.

B. The Utah Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of the adult education student.

C. Written course descriptions for AHSC required and elective courses shall be developed by LEA adult education programs for all classes taught, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.

D. Written course descriptions for GED Test preparation, ESOL and ABE courses shall be developed cooperatively by LEAs, CBOs and the USOE based on Utah Core curriculum standards, modified for adult learners.

E. Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and the Core curriculum.

F. Course content mastery shall be stressed rather than completion of predetermined seat time in a classroom.

G. Adult high school completion education is determined by the following prerequisite courses:

(1) ESOL competency AEFLA levels one through six;

(2) ABE competency AEFLA levels one through four.

H. AHSC courses for students seeking an Adult Education Secondary Diploma should meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits under the direction of a Utah licensed teacher as provided below:

(1) Adult High School Core Courses, as offered consistent with Utah Core objectives:

(a) 24.0 units of credit required through satisfaction of a course of study by demonstrated course competency or LEA-approved competency examination in correlation with the student's SEOP career focus as defined in the following instructional areas:

(i) Language Arts: 4.0;

(ii) mathematics: 3.0 individualized mathematics courses to meet the life needs of adult learners;

(iii) science: 3.0 from the four science foundations of chemistry, biological science, earth science, or physics;

(iv) social studies: 3.0 including 1.0 in United States history, .50 in United States government and citizenship, .50 in geography, .50 in world civilizations, and .50 general financial literacy;

(v) arts: 1.50;

(vi) healthy lifestyles: 2.0 individualized courses meeting the life needs of adult learners that include: .25 to 1.50 health education, .25 to 1.50 individualized fitness for life courses;

(vii) career and technical education (CTE): 1.00;

(viii) information technology: .50 computer technology courses or successful completion of school district-approved competency examination; and

(ix) electives: 6.0 units of credit.

(b) approved adult education credit options including continuous professional employment training required for a professional license; or

(c) documented achievement of a trade or skill;

(d) basic or advanced military training;

(e) apprenticeship, union or registered work credentials;

(f) successful passing score on all five GED Tests; academic credit for successfully passing all five GED Tests may only be applied toward an Adult Education Secondary Diploma if the proposed awarded units of credit were transcripted by June 30, 2009;

(f) transcripted college or university courses as they align to the Core instructional areas.

I. The USOE Adult Education Section and LEA programs shall disseminate clear information regarding revised adult education graduation requirements.

J. Adult education students receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and satisfied through completed credits or demonstrated course competency or a Utah High School Completion Diploma with a successful passing score on all five of the GED Tests consistent with students' SEOP career focus.

K. Adult Education Secondary Diploma graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) from age 16 until their 22nd birthday or an adult education SEOP, or both to meet unique educational needs.

L. A student's IEP or adult education SEOP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's disability(ies).

M. Modified graduation requirements for an individual student shall:

(1) be consistent with the student's IEP or SEOP, or both;

(2) be maintained in the student's files;

(3) maintain the integrity and rigor expected for AHSC graduation.

N. LEAs shall establish policies allowing or disallowing adult education students participation in graduation activities or ceremonies.

O. An adult education student may only receive an Adult Education Secondary Diploma earned through a designated Northwest accredited Utah adult education program, as approved by the Board.

P. Adult education programs shall accept credits and grades awarded to students without alteration from other state-recognized adult education programs, schools accredited by Northwest or schools or programs approved by the Board.

Q. Adult education programs may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from schools or private providers.

R. An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

S. Adult education programs shall provide instruction that allows students to transition between sites in a seamless manner.

T. An adult education student seeking a Utah High School Completion Diploma shall be offered a course of academic instruction designed to prepare the student to take the GED Tests.

U. A Utah High School Completion Diploma shall be issued by the Board and distributed by the GED testing centers as agents of the Board or directly by the USOE GED administrator. Receipt of the Utah High School Completion Diploma does not end entitlement to a free appropriate public education for a student eligible for special education under IDEA.

V. Upon completion of requirements for a Utah Adult Education Secondary Diploma, or a Utah High School Completion Diploma, adult education students may only continue in an adult education program to improve their basic literacy skills if:

(1) their academic skills are less than 12.9 grade level in an academic area of reading, math or English; and

(2) they lack sufficient mastery of basic educational skills to enable them to function effectively in society. The focus of instruction shall be solely literacy and is limited specifically to reading, math or English.

R277-733-9. Adult Education Programs--Tuition and Fees.

A. Any adult may enroll in an adult education class consistent with Section 53A-15-404.

B. Tuition and fees may be charged for ABE, GED preparation, AHSC, or ESOL courses in an amount not to exceed $100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines, under the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq. The appropriate student fees and tuition shall be determined by the local school board or CBO board of trustees.

C. Adults who are or may attend adult education programs shall be given adequate notice of program tuition and fees through public posting. Any charged tuition or fees shall be set and reviewed annually by the local school board or CBO board of trustees.

D. Adult education tuition and fees shall be waived or students shall be offered appropriate work in lieu of waivers for students who are younger than 18, qualify for fee waivers under R277-407, and their class has not graduated.

E. Tuition may be charged for courses that satisfy

requirements outlined in R277-733-8B, when adequate state or local funds are not available.

F. Fees may be charged for consumable and nonconsumable items necessary for adult high school courses that satisfy requirements outlined in R277-733-8B.

G. Fees and tuition charged and collected by adult education programs shall be reasonable and necessary as determined by the local boards of education or boards of trustees.

H. Collected fees and tuition shall be used specifically to provide additional adult education and literacy services that the program would otherwise be unable to provide.

I. The local program superintendent/chief executive officer and business administrator shall acknowledge by signature as part of the program's grant plan (state or federal, or both) submission and program assurances that all fees and tuition collected and submitted for accounting purposes are:

(1) returned/delegated with the exception of indirect costs to the local adult education program;

(2) used solely and specifically for adult education programming;

(3) not withheld and maintained in a general maintenance and operation fund.

J. All collected fees and tuition generated from the previous fiscal year shall be spent in the adult education program in the ensuing program year and shall not be used by an LEA in calculating carryover fund balance amounts.

K. Collected fees and tuition may not be counted toward meeting federal matching, cost sharing or maintenance of effort requirements related to the program's award.

L. Annually, local programs shall report to the school district or community-based organization and the USOE all fees and tuition collected from students associated with each funding source.

M. Fees and tuition collected from adult education students shall not be commingled or reported with community education funds or any other public education fund.

R277-733-10. Allocation of Adult Education Funds.

Adult education state funds shall be distributed to LEAs offering adult education programs consistent with percentages defined in adult education policy in the following areas:

A. Base amount distributed equally to each participating school district with a Board-approved adult education plan and budget.

B. Enrollee status students (not participants).

C. Contact hours (instructional and non-instructional) for both enrollee status students and participants.

D. Adult Education Secondary Diplomas or Utah High School Completion Diplomas, whichever is awarded first.

E. Enrollee level gains.

F. Enrollee adult education earned secondary credits.

G. Supplemental support, to be distributed to:

(1) LEA adult education programs receiving less than one percent of the state allocation as indicated on the state allocation table that do not have any carryover funds. Applications for supplemental funds are accepted and processed annually between October 15 and October 31. Awarded funds shall be used for special program needs or professional development, as determined by written request and USOE evaluation of need and approval.

(2) Any balance of supplemental funds may be applied for by all remaining eligible LEAs who may or may not have carryover funds for special program needs or professional development, as determined by written request and USOE evaluation of need and approval between November 1 and March 1 annually.

(3) LEA recaptured funds that are greater than allowable carryover amounts shall be added to the available supplemental funds and awarded to adult education programs based on the criteria defined in R277-733-10G(1) and (2).

H. Adult education federal AEFLA funds shall be distributed based on a competitive application. Second or subsequent year AEFLA funding shall be based on performance criteria established by the USOE, defined in adult education policy.

I. Funds, state or federal or both, may be withheld or terminated for noncompliance with:

(1) Board rule;

(2) adult education state policy and procedures or both;

(3) associated reporting timelines; and

(4) program monitoring outcomes, as defined by the USOE.

R277-733-11. Adult Education Records and Audits.

A. Official records shall be maintained in perpetuity:

(1) To validate student outcomes, programs shall maintain records for each program site in perpetuity which clearly and accurately show for each student:

(a) documentation of Utah residency; the student's initial managing program shall maintain documentation of Utah residency in the student's file in perpetuity;

(b) documentation of such proof shall be entered in the student's UTopia data record;

(2) copies of:

(a) transcripted grade data including previous report cards, transcripts, work verification, military training, professional licenses, union or registered work credentials;

(b) completed Core followup surveys;

(c) releases of information requesting student record information and releases of student information to other requesting agencies;

(d) special education IEPs for students under the age of 22; and

(e) outside psychological, psychiatric or medical documentation used in determining education programming accommodations; and records of accommodations.

B. To validate student outcomes annually, the student's managing program shall maintain records for each program site which clearly and accurately show for each student:

(1) signed or refusal to sign waiver or release forms;

(2) all assessment protocol sheets (pre- and post-tests) used to determine student's EFL and level gains; and

(3) contact hours (both noninstructional and instructional) documentation.

C. Audits:

(1) To ensure valid and accurate student data, all programs accepting either state or federal adult education funds, or both, shall enter and maintain required student data in the UTopia data system.

(2) Annually, an independent auditor shall be retained by each LEA and CBO to audit student accounting records to verify UTopia data entries in addition to validating the cash controls over collections of student fees.

(3) Reports of accuracy shall be completed and submitted to the LEAs boards, the CBOs' boards of trustees, and as appropriate, the local adult education program director, and the USOE.

(4) The USOE shall receive the final auditor report from each adult education program by September 15 annually.

(5) A program shall prepare and submit to the USOE written corrective action plan for each audit finding by October 15 annually.

(6) USOE adult education staff members are responsible to monitor and assist programs in the resolution of corrective action plans.

(7) A program's failure to resolve audit findings may result in the termination of state and federal funding, or both.

(8) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to the school districts and CBOs by the USOE in cooperation with the State Auditor's Office and published under the heading of APPC-5.

(9) USOE Adult Education program staff shall conduct tri-annual program reviews of each adult education program to ensure accuracy of program data and program compliance. Desk monitoring shall be completed with program directors throughout the program year. Additional informal monitoring or reviews or site visits may be conducted as necessary.

(10) Monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.

(11) A program's failure to resolve audit findings may result in the termination of state or federal funding or both as provided in R277-114, Corrective Action and Withdrawal or Reduction of Program Funds.

(13) The USOE shall review for cause school district or CBO records and practices for compliance with the law and this rule.

R277-733-12. Advisory Council.

A. The State Superintendent of Public Instruction or designee shall represent Adult Education programs on the Department of Workforce Services State Council as a voting member.

B. Adult education programs shall participate on or establish and maintain a local interagency advisory council consisting at a minimum of partner agencies including the Department of Workforce Services, the State Office of Rehabilitation, higher education, the Utah College of Applied Technology, industry and community representation, and other appropriate agencies with the purpose of supporting the mission of adult education in Utah.

R277-733-13. Oversight, Monitoring, Evaluation, and Reports.

The Board may designate no more than two percent of the total legislative appropriation for adult education services to be used specifically by the USOE for oversight, monitoring, and evaluation of adult education programs and their compliance with law and this rule.

KEY: adult education
June 7, 2012 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53A-15-401**
53A-1-402(1)
53A-1-401(3)
53A-1-403.5
53A-17a-119
53A-15-404

R277. Education, Administration.
R277-735. Corrections Education Programs.
R277-735-1. Definitions.

A. "Adult Basic Education (ABE)" means a program of instruction below the 9.0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:

(1) increasing their independence;

(2) improving their ability to benefit from occupational training;

(3) increasing opportunities for more productive and profitable employment; and

(4) making them better able to meet adult responsibilities.

B. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.

C. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

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

E. "Community-based organization (CBO)" means a nonprofit organization:

(1) eligible for and accepting federal AEFLA funds; and

(2) for the sole purpose of providing adult education services to qualified adult education learners.

(3) All rules and laws that apply to school districts shall also apply to CBOs that receive adult education funding.

(4) CBOs:

(a) apply to the USOE;

(b) receive adult education funding through a competitive process; and

(c) receive USOE funding on a reimbursement basis only.

F. "Custody" means the status of being legally in the control of another adult person or a public agency.

G. "Education Contracts funds" means funds appropriated annually by the Legislature to be used partly for corrections education.

H. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

I. "General Educational Development (GED) Testing" means the test required under R277-702.

J. "Inmate" means an offender who is incarcerated in state or county correctional facilities. Inmates may be housed in various locations throughout the state of Utah.

K. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:

(1) all Board and LEA board graduation requirements;

(2) the individual student's specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post-secondary training goals;

(3) evidence of parent, student, and school representative involvement annually; and

(4) attainment of approved workplace skill competencies.

L. "Teaching of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.

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

N. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.

R277-735-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-403.5 which makes the Board directly responsible for the education of inmates in custody and Section 53A-1-401(3) which allows the Board and Board of Regents to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system.

C. Corrections education programs shall be consistent with R277-733, Adult Education Programs.

R277-735-3. Procedures for Providing Services.

A(1) The Board may contract with local school boards, state post-secondary educational institutions, other state agencies, or private providers of the local boards' choosing to provide educational services for inmates.

(2) The respective responsibilities of the Board, local school boards, and other service providers for education shall be established by memoranda of agreement or contracts.

(3) A school district may sub-contract with local educational service providers for the provision of educational services to students.

(4) Educational services shall be provided in the appropriate environment for the student's behavior and educational performance.

(5) Educational programs to which inmates are assigned shall meet the standards adopted by the Board for that type of program.

(6) Educational programs shall be monitored by the USOE in periodic review visits.

(7) Educational services shall be sufficiently coordinated with non-custody programs to enable inmates in custody to continue their public school education with minimal disruption following discharge from custody.

(8) Custodial status alone does not qualify an individual for services under the Individuals with Disabilities Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

B. When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in UTopia releasing the student's records as soon as possible after receiving notice of the transfer.

C. When a student inmate is released from custody, educational records shall only be available consistent with the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; 34 CFR Part 99.

D. Corrections education programs shall adhere to the same overarching program standards and practices defined for all adult education programs, consistent with R277-733, unless otherwise noted.

R277-735-4. Fiscal Procedures.

A. Inmates receiving educational services by or through a school district become students of that school district for funding purposes.

B. State funds appropriated to the USOE for corrections education shall be allocated to school districts on the basis of annual applications.

C. Funds approved for corrections education projects can be expended only for the purposes described in the respective funding application.

D. Lapsing and nonlapsing funds

(1) Education Contracts funds used for corrections education shall be subject to Board accounting, auditing and budgeting rules and policies.

(2) Ten percent or $50,000, whichever is less, of state funds designated for corrections education not expended in the

current fiscal year may be carried over/deferred by a school district with written approval by the USOE and spent in the next fiscal year.

(3) Requested and approved school district budgets that show carry over funds shall be submitted for approval according to a time line and dates set by the USOE.

(4) The USOE may consider excess funds in determining the school district's allocation for the next fiscal year. The USOE shall recapture fund balances in excess of 10 percent or $50,000 annually no later than February 1 and reallocate funds to school district corrections education programs through the supplemental award process based on need and effort consistent with R277-733.

E. The Board, or its designee, shall adopt uniform pupil and fiscal accounting procedures, forms, and deadlines for correctional education programs.

R277-735-5. Allocation of Education Contracts Funds Designated for Corrections Education.

A. Oversight, monitoring, evaluation, and reports:

(1) The Board may designate no more than four percent of the total legislative Education Contracts funding appropriated for adult corrections education for USOE administrative services.

(2) The USOE shall use designated funds for oversight, monitoring and evaluation of corrections adult education programs and program compliance with law and this rule.

B. Education Contracts funding designated for state prisons and country jails housing state offenders:

(1) Of the total number of incarcerated offenders in the custody of the Utah Department of Corrections, the percentage housed in county jails and the percentage housed at prison sites, shall be calculated each year.

(2) Those percentages shall determine the percentages of Education Contracts funding designated for corrections education that is provided to school districts serving students in respective facilities.

(3) Eligible school districts shall receive a base amount of $10,000 for each prison or county jail in which they provide services.

(4) The balance of the percentages shall be prorated to respective school districts based upon total student enrollee counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding.

R277-735-6. Program, Curriculum, Outcomes and Student Mastery.

A. Corrections education programs shall provide programs that allow students to transition between correctional sites in a seamless manner.

B. Adult education students receiving education services in a state prison or jail education program may graduate with a school district adult education secondary diploma upon completion of the state required minimum units of credit under R277-700 and satisfied through completed credits or demonstrated course competency consistent with students' SEOP/plans for college and career readiness under R277-733.

C. Graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) consistent with IDEA.

D. Modified graduation requirements for individual students shall:

(1) be consistent with the student's IEP or SEOP/plan for college and career readiness, or both;

(2) be maintained in the student's files;

(3) maintain the integrity and rigor expected for AHSC graduation.

E. Corrections education programs shall offer courses consistent with the Utah Core curriculum under R277-700.

F. The Utah Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of adult education students.

G. School district adult education staff shall develop and write (both elective and required) course descriptions for AHSC courses, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.

H. School districts, CBOs and the USOE shall cooperate to develop written course descriptions for GED Test preparation, ESOL and ABE courses; courses shall be based on the Utah Core curriculum standards, modified for adult learners.

I. Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and Core curriculum.

J. Course content mastery shall be stressed rather than completion of required seat time in a classroom.

K. Adult high school completion education is determined by the following prerequisite courses:

(1) ESOL competency AEFLA levels one through six; and

(2) ABE competency AEFLA levels one through four.

L. AHSC courses for students seeking an Adult Education Secondary Diploma should meet the federal AEFLA AHSC Levels I and II competency requirements.

M. Adult students seeking an adult high school diploma shall have the minimum credits defined in R277-705.

N. The courses shall be supervised by a Utah licensed educator.

R277-735-7. Confidentiality.

A. Transcripts and diplomas prepared for inmates in custody shall be issued in the name of the contracted educational agency which also provides service to non-custodial offenders and shall not bear reference to custodial status.

B. School records which refer to custodial status, inmate court records, and related matters shall be kept separate from permanent school records and shall be destroyed or may be sealed upon order of a court of competent jurisdiction.

C. Access to Student Records

(1) Staff who design and oversee individual student education plans shall have access to all appropriate records relevant to a student's education.

(2) Information obtained from student records remains the property of the supplying agency and shall be transferred or shared with other persons or agencies only consistent with 34 CFR 99.10.

R277-735-8. Corrections Education Records and Audits.

Corrections adult education programs shall meet program standards defined in R277-733-11A and B.

KEY: public education, custody*, inmates*
May 8, 2014 Art X Sec 3
Notice of Continuation June 6, 2017 53A-1-403.5
53A-1-401(3)

R277. Education, Administration.
R277-911. Secondary Career and Technical Education.
R277-911-1. 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;

(c) Section 53A-15-202, which allows the Board to establish minimum standards for CTE programs in the public education system; and

(d) Sections 53A-17a-113 and 53A-17a-114, which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.

(2) This rule establishes standards and procedures for LEAs seeking to qualify for funds administered by the Board for CTE programs in the public education system.

R277-911-2. Definitions.

(1) "Aggregate membership" means the sum of all days in membership during a school year for:

(a) the student;

(b) the program;

(c) the school;

(d) the LEA; or

(e) the state.

(2) "Approved program" means a program annually approved by the Board through the consent calendar process that meets or exceeds the state program standards or outcomes for career and technical education programs.

(3) "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

(4)(a) "Career and technical education" or "CTE" means organized educational programs that:

(i) prepare individuals for a wide range of high-skill, high-demand careers;

(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(iii) provide students competency-based instruction, hands-one experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:

(i) agriculture;

(ii) business;

(iii) family and consumer sciences;

(iv) health science;

(v) information technology;

(vi) marketing;

(vii) skilled and technical sciences; and

(viii) technology and engineering education.

(5)(a) "CTE pathway" means a planned sequence of courses within a program of study to assure strong academic and technical preparation connecting high school course work to work beyond high school.

(b) A CTE pathway ensures that a student will be prepared to take advantage of the full range of post-secondary options, including:

(i) on-the-job training;

(ii) certification programs; and

(iii) two- and four-year college degrees.

(6) "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

(7)(a) "Course" means an individual CTE class structured by state-approved standards and CIP code.

(b) An approved course may require one or two periods for up to one year.

(c) Courses may be completed by demonstrated competencies or by course completion.

(8)(a) "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field.

(b) Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation.

(c) Competent performance of entry-level tasks enhances employability and initial productivity.

(9) "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.

(10) "CTE Maintenance of Effort" or "MOE" means the expenditure plan outlined in Subsection R277-911-4(1).

(11) "Program" means a combination of CTE courses that:

(a) provides the competencies for specific job placement or continued related training; and

(b) is outlined in the Plan for College and Career Readiness using all available and appropriate high school courses.

(12) "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, or other prescribed learning experiences as determined by the Plan for College and Career Readiness.

(13) "Regional consortium" means the LEAs, applied technology colleges, colleges and universities within the regions that approve CTE programs.

(14) "Registered apprenticeship" means a training program that:

(a) includes on-the-job training in a specific occupation combined with related classroom training; and

(b) has approval of the Bureau of Apprenticeship and Training.

(15) "Related training" means a course or program that is:

(a) directly related to an occupation;

(b) compatible with apprenticeship training;

(c) taught in a classroom; and

(d) approved by the Bureau of Apprenticeship and Training.

(16) "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to:

(a) specific skill certification;

(b) job placement;

(c) continued education; or

(d) training.

(17)(a) "Skill certification" means a verification of competent task performance.

(b) Skills certification is provided by an approved state or national program certification process.

(18) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which an LEA is eligible.

(19)(a) "Work-based learning" means a student instructional program that:

(a) provides a student training by employment or other activity at a work site;

(b) may take place at a place of business, a home, or a farm; and

(c) is supplemented by needed classroom instruction or teacher assistance.

R277-911-3. CTE Program Approval.

(1)(a) The Superintendent shall approve CTE programs based on verified training needs of the area and the competencies necessary to provide occupational opportunities for students.

(b) Programs are supported by a data base, including:
(i) local, regional, state, and federal manpower projections;
(ii) student occupational/interest surveys;
(iii) regional job profile;
(iv) advisory committee information; and
(v) follow-up evaluation and reports.
(2) LEA CTE directors shall meet the requirements specified in R277-911.
(3) Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.
(4)(a) An LEA shall provide CTE guidance, counseling, and Board approved testing for students enrolled in CTE programs.
(b) An LEA shall develop a written plan for placement services with the assistance of local advisory committees, business and industry, and the Department of Workforce Services.
(c) An LEA shall develop a Plan for College and Career Readiness for all students, which shall include:
(i) a student's education occupation plans (grades 7-12), including job placement when appropriate;
(ii) all Board, local board and local charter board graduation requirements;
(iii) evidence of annual parent, student, and school representative involvement;
(iv) attainment of approved workplace skill competencies; and
(v) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.
(5)(a) An LEA shall use curricula and instruction that is directly related to business and industry validated competencies.
(b) An LEA shall use a valid skill certification process to verify successful completion of competencies.
(c) An LEA shall provide instruction in proper and safe use of any equipment required for skill certification within the approved program.
(6) An LEA shall provide and safely maintain equipment and facilities, consistent with the validated competencies identified in the instruction standard and applicable state and federal laws.
(7)(a) Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach.
(b) Licenses and endorsements required under Subsection (7)(a) may be obtained through an institutional recommendation or through occupational and educational experience verified by the Board's licensure process.
(c) CTE program instructors shall keep technical and professional skills current through business and industry involvements in order to ensure that students are provided accurate state-of-the-art information.
(8) An LEA shall conduct CTE programs consistent with Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of:
(a) race;
(b) creed;
(c) color;
(d) national origin;
(e) religion;
(f) age;
(g) sex; and
(h) disability.
(9)(a) An LEA shall establish an active advisory council to review all CTE programs annually.
(b) An advisory council may serve several LEAs or a region.
(c) An advisory council reviews:
(i) program offerings;
(ii) quality of programs; and
(iii) equipment needs.
(10) A program advisory committee made up of individuals who are working in the occupational area shall support each state-funded approved CTE program at the LEA or regional level.
(11) LEAs are encouraged to make training available through nationally-chartered CTE student leadership organizations in each area of study.
(12) An LEA, with oversight by local program advisory committee members, shall make an annual evaluation of its CTE programs.

R277-911-4. Disbursement and Expenditure of CTE Funds -- General Standards.
(1) To be eligible for state CTE program funds, an LEA shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership in funded CTE programs, times the current year WPU value, less the amount for:
(a) college and career awareness;
(b) work-based learning; and
(c) comprehensive counseling and guidance.
(2) An LEA may thereafter expend State CTE program funds only for approved CTE programs, grades nine through twelve.
(3) An LEA that does not meet MOE may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

R277-911-5. Disbursement of Funds -- Added Cost Funds.
(1)(a) WPUs shall be allocated for the added instructional costs of approved CTE programs operated or contracted by an LEA.
(b) Programs and courses provided through applied technology colleges, and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.
(2)(a) Computerized or manually produced records for CTE programs shall be kept by:
(i) teacher;
(ii) class; and
(iii) CIP code.
(b) Records described in Subsection (2)(a) shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.
(3) Added cost funds shall not be generated:
(a) during bus travel;
(b) until a student starts attending an approved CTE course;
(c) when a student has been absent, without excuse, for the previous 10 days.
(4) Approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.
(5) Allocations under this R277-911-5 are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to LEAs experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.
(6) Added cost funds shall be used to cover the added CTE program instructional costs of LEA programs.
(7) An LEA that does not comply with the requirements of this Subsection may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with

R277-114.

R277-911-6. Disbursement of Funds -- Skill Certification.

(1) An LEA that demonstrates approved student skill certification may receive additional compensation.

(2)(a) To be eligible for skill certification compensation, an LEA shall show its student completer has demonstrated mastery of standards, as established by the Board.

(b) An authorized test administrator shall verify student mastery of the skill standards.

(3) The Superintendent may only disburse skill certification compensation if an approved skill certification assessment is developed for the program.

R277-911-7. Disbursement of Funds -- CTE Leadership Organization Funds.

(1) Participating LEAs sponsoring CTE leadership organizations shall be eligible for a portion of funds set aside for these organizations.

(2) Qualifying CTE leadership organizations shall be nationally chartered and include:

(a) SkillsUSA (an association of Skilled and Technical Sciences Education students);

(b) DECA (Distributive Education Clubs of America);

(c) FFA (Future Farmers of America);

(d) HOSA (Health Occupations Students of America);

(e) FBLA (Future Business Leaders of America);

(f) FCCLA (Family, Career and Community Leaders of America); and

(g) TSA (Technology Students Association).

(3) Up to 1% of the state CTE appropriation for LEAs shall be allocated to eligible LEAs based on documented prior year student membership in approved CTE leadership organizations.

(4)(a) A portion of funds allocated to an LEA for CTE leadership organizations shall be used to pay the LEA's portion of statewide administrative and national competition costs.

(b) An LEA shall use the remaining amount available for the LEA's CTE leadership organization expenses.

R277-911-8. Disbursement of Funds -- School District and Charter School WPUs.

(1) The Superintendent shall allocate WPUs for costs of administration of CTE programs as described in this section.

(2)(a) The Superintendent shall distribute Twenty (20) WPUs to a school district for costs associated with the administration of CTE.

(b) To qualify, a school district shall employ a minimum one-half time CTE director.

(3)(a) To encourage multidistrict CTE administrative services, the Superintendent shall distribute 25 WPUs to a school district that consolidates CTE administrative services with one or more other school districts;

(b) To qualify, a participating school district shall employ a full-time CTE director.

(4)(a) The Superintendent shall distribute Twenty-five (25) WPUs to a single charter school acting as fiscal agent, to provide CTE administrative services to all charter schools offering CTE pathways, grades 9-12.

(b) If more than 10 charter schools offer CTE pathways, the Superintendent shall distribute an additional 5 WPUs for each additional charter school over 10.

(c) To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.

(5)(a) The Superintendent shall distribute 10 WPUs to a small school district consisting of only necessarily existent small high school(s), where multi-district CTE administration is not feasible.

(b) To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.

(6) To qualify for 10, 20 or 25 CTE administrative WPUs as provided in this Subsections (1) through (5), a CTE director shall:

(a) hold or be in the process of completing requirements for a Education Leadership License Area of Concentration described in R277-505;

(b) have an endorsement in at least one career and technical area listed in Rule R277-518; and

(c)(i) have four years of experience as a full-time career and technical educator; or

(ii) complete a prescribed professional development program provided by the Superintendent within a period of two years following board appointment as an LEA CTE director.

(7) In addition to WPUs appropriated under Subsections (1) through (5), the Superintendent shall allocate funds to each approved high school as described in Subsections (8) through (15):

(8) The Superintendent shall distribute 10 WPUs to a high school that:

(a) conducts approved programs in a minimum of two CTE areas specified in Subsection R277-911-1(4)(b);

(b) conducts a minimum of six different state-approved CIP coded courses including at least one CTE pathway; and

(c) has at least one approved career and technical student leadership organization.

(9) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(10) The Superintendent shall distribute 15 WPUs to a high school that:

(a) conducts approved programs in a minimum of three CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of nine different state-approved CIP coded courses including at least one CTE pathway; and

(c) has at least one approved CTE student leadership organization.

(11) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(12) The Superintendent shall distribute 20 WPUs to a high school that:

(a) conducts approved programs in a minimum of four CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of twelve different state-approved CIP coded courses including at least two CTE pathways; and

(c) has at least two approved CTE student leadership organization.

(13) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(14) The Superintendent shall distribute 25 WPUs to a high school that:

(a) conducts approved programs in a minimum of five CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of fifteen different state-approved CIP coded courses including at least two CTE pathways; and

(c) has at least three approved CTE student leadership organizations.

(15) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(16)(a) A maximum of one approved alternative high school, as outlined in Rule R277-730, per school district may qualify for funds under Subsection (12).

(b) LEAs sharing an alternative school shall receive a prorated share.

(17) Programs and courses provided through school district technical centers may not receive funding under this section.

R277-911-9. Disbursement of Funds -- School District Technical Centers.

(1)(a) The Superintendent may award a maximum of forty WPUs for each school district operating an approved school district center.

(b) To qualify under the approved school district technical center provision, the school district shall:

(i) provide at least one facility other than an existing high school as a designated school district technical center;

(ii) employ a full-time CTE administrator for the center;

(iii) enroll a minimum of 400 students in the school district technical center;

(iv) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges, and higher education institutions;

(v) centralize high-cost programs in the school district technical center;

(vi) conduct approved programs in a minimum of five CTE areas specified in Subsection R277-911-1(4)(b); and

(vii) conduct a minimum of fifteen different state-approved CIP coded courses.

R277-911-10. Disbursement of Funds -- Summer CTE Agriculture Programs.

(1)(a) To receive state summer CTE agriculture program funds, an LEA shall submit to the Superintendent, an application for approval of the LEA's program.

(b) An LEA shall submit its application prior to the annual due date specified by the Superintendent each year.

(c) The Superintendent shall send notification of approval of an LEA's program within ten calendar days of receiving the application.

(2) A teacher of a summer CTE agriculture program shall:

(a) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in Subsection R277-911-3(7);

(b) develop a calendar of activities which shall be approved by LEA administration and reviewed by the Superintendent;

(c)(i) work a minimum of eight hours a day in the summer CTE agriculture program;

(ii) An LEA may approve exceptions which shall be reflected in the calendar of activities;

(d) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer CTE agriculture program;

(e) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with:

(i) the school principal;

(ii) the LEA CTE director; and

(iii) the Superintendent; and

(f) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

(3) College interns may be approved to conduct summer CTE agriculture programs upon approval by the Superintendent.

(4) Students enrolled in the summer CTE agriculture program shall:

(a) have on file in the LEA office the student's Plan for College and Career Readiness goal related to agriculture;

(b) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

(c) have completed the eighth grade; and

(d) have not have graduated from high school.

(5)(a) The Superintendent shall collect data from the program and staff of each LEA to ensure compliance with approved standards.

(b) An LEA shall submit to the Superintendent a final program report, on forms provided by the Superintendent on the annual due date specified by the Superintendent.

(6)(a) The Superintendent shall allocate Summer CTE agricultural funding to each LEA conducting an approved program for a minimum of 35 students lasting nine weeks.

(b) An LEA may receive funding for no more than nine weeks or 35 students.

(7) An LEA operating a program with fewer than 35 students per teacher or for fewer than nine weeks may only receive a prorated share of the summer CTE agricultural allocation.

R277-911-11. Disbursement of Funds - Comprehensive Counseling and Guidance; College and Career Awareness, and Work-Based Learning Programs.

A. The Superintendent shall distribute funds to LEAs consistent with Section 53A-17a-113.

(2) An LEA shall spend funds distributed for comprehensive guidance consistent with Subsection 53A-1a-106(2)(b) and R277-462, which explain the purpose and criteria for student education plans (SEPs) and Plan for College and Career Readiness.

(3) An LEA may spend funds allocated under this section to fund work-based learning programs consistent with Rules R277-915 and R277-916.

(4) An LEA may spend funds allocated under this section to fund College and Career Awareness programs consistent with Rule R277-916.

KEY: career and technical education
August 11, 2016 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53A-15-202**
53A-17a-113
53A-17a-114

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

"Air Pollution" means the presence of an air pollutant in the ambient air in such quantities and duration and under conditions and circumstances, that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access. (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as found in 42 U.S.C. Chapter 85.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in

the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Condensable PM2.5" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air pollutant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air pollutant or an effluent which contains or may contain an air pollutant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air pollutant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air pollutant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these

pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

(i) Salt Lake County, effective August 18, 1997; and

(ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

(i) Salt Lake City, effective March 22, 1999;

(ii) Ogden City, effective May 8, 2001; and

(iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO2, NOx, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42

of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals,

chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air pollutant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2016.

KEY: air pollution, definitions
June 8, 2017 19-2-104(1)(a)
Notice of Continuation May 8, 2014

R307. Environmental Quality, Air Quality.
R307-210. Standards of Performance for New Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources.

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2016, except for Subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and HHHH, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "director" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
June 8, 2017 19-2-104(3)(q)
Notice of Continuation May 12, 2016 19-2-108

R307. Environmental Quality, Air Quality.
R307-214. National Emission Standards for Hazardous Air Pollutants.
R307-214-1. Pollutants Subject to Part 61.

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2016, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the director.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2016, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the director, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.
(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.
(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.
(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.
(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.
(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.
(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.
(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.
(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.
(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.
(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.
(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.
(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).
(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).
(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).
(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.
(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).
(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.
(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.
(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.
(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.
(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers

and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test

Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(98) 40 CFR Part 63, Subpart WWWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(99) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(100) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(101) 40 CFR Part 63 Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(102) 40 CFR Part 63 Subpart CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(103) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(104) 40 CFR Part 63, Subpart EEEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart FFFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(106) 40 CFR Part 63, Subpart GGGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(107) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(108) 40 CFR Part 63, Subpart LLLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(109) 40 CFR Part 63, Subpart MMMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(110) 40 CFR Part 63, Subpart NNNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(111) 40 CFR Part 63, Subpart OOOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(112) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(113) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(114) 40 CFR Part 63, Subpart RRRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart SSSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(117) 40 CFR Part 63, Subpart TTTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(118) 40 CFR Part 63, Subpart WWWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(119) 40 CFR Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(120) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(121) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(122) 40 CFR Part 63, Subpart AAAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(123) 40 CFR Part 63, Subpart BBBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(124) 40 CFR Part 63, Subpart CCCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(125) 40 CFR Part 63, Subpart DDDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(126) 40 CFR Part 63, Subpart EEEEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

KEY: air pollution, hazardous air pollutant, MACT, NESHAP
June 8, 2017 19-2-104(1)(a)
Notice of Continuation May 15, 2017

R317. Environmental Quality, Water Quality.
R317-801. Utah Sewer Management Program (USMP).
R317-801-1. Applicability and Definitions.

1.1 Applicability. Any federal or state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system is required to comply with this rule, R317-801.

1.2 Definitions. The following definitions are to be used in conjunction with those in R317-1-1 and R317-8-1. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "BMP" means "best management practice".
(2) "CCTV" means "closed circuit television.
(3) "CIP" means a "Capital Improvement Plan".
(4) "DWQ" means "the Utah Division of Water Quality".
(5) "FOG" means "fats, oils and grease".
(6) "I/I" means "infiltration and inflow".
(7) "Permittee" means the federal and state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system or who is in direct responsible charge for operation and maintenance of the sewer collection system. When two separate federal and state agency, municipality, county, district, and other political subdivision of the state are interconnected, each shall be considered a separate Permittee.
(8) "SECAP" means "System Evaluation and Capacity Assurance Plan".
(9) "Sewer Collection System" means a system for the collection and conveyance of wastewaters or sewage from domestic, industrial and commercial sources. The Sewer Collection System does not include sewer laterals under the ownership and control of an owner of real property, private sewer systems owned and operated by an owner of real property, and systems that collect and convey stormwater exclusively.
(10) "SORP" means "Sewer Overflow Response Plan"
(11) "SSMP" means "Sewer System Management Plan".
(12) "SSO" means "sanitary sewer overflow", the escape of wastewater or pollutants from, or beyond the intended or designed containment of a sewer collection system.
(13) "Class 1 SSO" (Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that:
(a) effects more than five private structures;
(b) affects one or more public, commercial or industrial structure(s);
(c) may result in a public health risk to the general public;
(d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures; or
(e) discharges to Waters of the state.
(14) "Class 2 SSO" (Non Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that does not meet the Class 1 SSO criteria.
(15) "USMP" means the "Utah Sewer Management Program".

R317-801-2. General Permit Requirements.

2.1 General Permit for sewer collection system. All permittees are required to operate under the General Permit for sewer collection systems as required by this rule, R317-801.

2.2 Notice of Intent Requirements.

(1) A permittee shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems between October 1, 2012 and November 30, 2012. A new permittee for a sewer collection system shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems at least three (3) months prior to operation of the system.

(2) Forms and instructions for submitting a Notice of Intent can be obtained online on the DWQ's website.

2.3 Effective Date of General Permit.

General permit coverage will be in effect when the Notice of Intent has been submitted, approved and declared complete by the Executive Secretary.

R317-801-3. General Permit Provisions.

3.1 Prohibitions.

(1) Any SSO that results in a discharge of untreated or partially treated wastewater to Waters of the state is prohibited.

(2) Any SSO that results in a discharge of untreated or partially treated wastewater that creates a health hazard, nuisance, or is a threat to the environment is prohibited.

3.2 General SSO Requirements.

1) The permittee shall take all feasible steps to eliminate SSOs to include:
(a) properly managing, operating, and maintaining all parts of the sewer collection system;
(b) training system operators;
(c) allocating adequate resources for the operation, maintenance, and repair of its sewer collection system, by establishing a proper rate structure, accounting mechanisms, and auditing procedures to ensure an adequate measure of revenues and expenditures in accordance with generally acceptable accounting practices; and,
(d) providing adequate capacity to convey base flows and peak flows, including flows related to normal wet weather events. Capacity shall meet or exceed the design criteria of R317-3.

(2) SSOs shall be reported in accordance with the requirements of R317-801-4.

(3) When an SSO occurs, the permittee shall take all feasible steps to:
(a) control, contain, or limit the volume of untreated or partially treated wastewater discharged;
(b) terminate the discharge;
(c) recover as much of the wastewater discharged as possible for proper disposal, including any wash down water; and,
(d) mitigate the impacts of the SSO.

R317-801-4. General Permit SSO Reporting Requirements.

4.1 SSO Reporting. SSOs shall be reported as follows:

(1) A Class 1 SSO shall be reported orally within 24 hrs and with a written report submitted to the DWQ within five calendar days. Class 1 SSO's shall be included in the annual USMP report.

(2) Class 2 SSOs shall be reported on an annual basis in the USMP annual report.

4.2 Annual Report. A permittee shall submit to DWQ a USMP annual operating report covering information for the previous calendar year by April 15 of the following year.

R317-801-5. SSMP Requirements.

5.1 SSMP. The permittee shall have and implement a written SSMP and shall make it available to DWQ upon request. A copy of the SSMP shall be publicly available at the permittee's office and/or available on the Internet. The SSMP must be publicly noticed by the permittee and approved by the permittee's governing body at a public meeting. The main purpose of the SSMP is to provide a plan and schedule to properly manage, operate, and maintain all parts of the sewer collection system to reduce and prevent SSOs, as well as minimize impacts of any SSOs that occur.

5.2 Contents of SSMP. The SSMP shall include:

(1) Organization information to include:
(a) The name or position of the responsible or authorized representative;

(b) The names and telephone numbers for management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP. The SSMP must identify lines of authority through an organization chart or similar document with a narrative explanation; and,

(c) The chain of communication for reporting SSOs, from receipt of a complaint or other information, including the person responsible for reporting SSOs to DWQ, the public (if needed) and other agencies if applicable (such as County Health Department).

(2) Sewer collection system use ordinances, service agreements, or other legally binding methods, that:

(a) Prohibit unauthorized discharges into its sewer collection system i.e. I/I, stormwater, chemical dumping, unauthorized debris and cut roots;

(b) Require that sewers and connections be properly designed and constructed;

(c) Ensure access for maintenance, inspection, or repairs for portions of the laterals owned or maintained by the permittee;

(d) Limit the discharge of FOG and other debris that may cause blockages;

(e) Require compliance with pretreatment requirements;

(f) Provide authority to inspect industrial users; and,

(g) Provide for enforcement for violations of the requirements.

(3) An Operations and Maintenance Plan which includes:

(a) An up-to-date map of the sewer collection system, showing all gravity line segments, manholes, pumping facilities, pressure pipes, gates and all other applicable conveyance facilities;

(b) A description of routine preventative operation and maintenance activities by staff and contractors, including a system for scheduling regular maintenance and cleaning of the sewer collection system with more frequent cleaning and maintenance targeted at known problem areas. The plan should include regular visual and TV inspection of manholes and sewer pipes and a system of ranking the condition of sewer pipe and manholes. The plan should have an appropriate system to document scheduled and all other types of work activities, such as a maintenance, management, system, or paper work orders;

(c) A Rehabilitation, Replacement and Improvement Plan to identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each class of deficiencies. Rehabilitation and replacement should focus on sewer pipes that are at risk of failure or prone to more frequent blockages due to pipe defects. The rehabilitation and replacement plan shall include a CIP, if required, that addresses proper management and protection of the infrastructure assets;

(d) Schedule for training on a regular basis for staff and contractors in operations and maintenance consistent with DWQ continuing education requirements for certified operators; and,

(e) Providing for equipment and replacement part inventories, including identification of critical replacement parts. (This may include a list of vendors that the equipment and/or part can be purchased from, or local agreements).

(4) Design and performance provisions which include:

(a) Design, construction standards and specifications that meet or exceed R317-3 for the installation of new sewer collection systems, pump stations and other appurtenances and for the rehabilitation and repair of existing sewer collection systems; and,

(b) Procedures and standards for inspecting, testing and documenting the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.

(5) A SORP which has the following measures to protect public health and the environment:

(a) A program to respond to overflows which addresses:

1. Receipt and documentation of information regarding a sewer overflow;

2. Dispatch of appropriate crews to the site of the sewer overflow;

3. Overflow correction, containment, and cleanup including procedures to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to Waters of the state and to minimize or correct any adverse impact on the environment resulting from the sewer overflow;

4. Preparation of an overflow report by responding personnel; and,

5. Follow up with affected persons,

(b) Procedures for prompt notification to the public.

(c) Procedures to notify appropriate regulatory agencies and other potentially affected entities to include:

1. DWQ to comply with SSO reporting requirements;

2. County Health Department, local water supply agencies as appropriate, and other affected agencies should the SSO potentially affect the public health or reach the Waters of the state;

3. Utah Division of Emergency Response and Remediation, if hazardous materials are or may be involved; and,

4. Any other required UPDES, State, or Federal reporting requirements.

(d) Procedures to ensure that appropriate staff personnel are aware of and follow the SORP and are appropriately trained.

(6) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a FOG control plan consistent with the potential for FOG discharge from commercial and industrial dischargers. Where required, the FOG control plan shall include some or all of the following:

(a) An implementation plan and schedule for a residential and commercial public education outreach for the FOG control plan that promotes proper disposal of FOG;

(b) A plan for the disposal of FOG generated within the permittee's service area. This may include a list of acceptable disposal facilities and/or additional facilities needed to adequately dispose of FOG;

(c) Sewer collection system use ordinances, service agreements, or other legally binding methods, that prohibit FOG discharges to the system;

(d) Requirements to install grease removal devices (such as traps or interceptors), design standards for the removal devices, maintenance requirements, BMP requirements, record keeping and reporting requirements;

(e) A FOG inspection, monitoring and evaluation plan;

(f) Identification of resources to do inspections and enforce the FOG control plan; and,

(g) A maintenance schedule for lines affected by FOG blockages.

(7) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a SECAP. Where required, the SECAP shall include the following:

(a) an evaluation of the wastewater collection system's existing hydraulic capacity using historical information such as flow, system records, current zoning, local development options, and maintenance records;

(b) identification of system deficiencies; and,

(c) a CIP that includes an appropriate model for the system that can be used to evaluate the hydraulic conditions in the system and identify existing and forecast future deficiencies to provide hydraulic capacity such as for future dry weather peak flow conditions, as well as the appropriate design for storm or wet weather events. The CIP shall establish a short and long term schedule to address the deficiencies and conditions identified, including a priority list, alternative analysis, and schedule for recommended upgrades. The CIP shall include

increases in pipe size, I/I reduction plans, increases in pumping capacities and/or redundancies, storage capacity increases and recommended trunk line cleaning schedules or other monitoring activities. The CIP shall identify the sources of funding. The schedule shall be reviewed and adjusted yearly.

5.3 Monitoring, Measurement, and SSMP Modifications.

(1) The permittee shall maintain relevant information that can be used to establish and prioritize appropriate SSO prevention activities and shall document all monitoring activities (i.e. daily cleaning activities, CCTV video records, manhole inspections, and hot spot activities).

(2) The permittee shall regularly review the effectiveness of each element of the SSMP and shall monitor the SECAP implementation (when required).

(3) The permittee shall annually assess the success of the operation and maintenance plan (i.e. line cleaning, CCTV inspections and manhole inspections, and SSO events) and adjust the operation and maintenance plan as needed based on system performance.

(4) The permittee shall update SSMP elements, as appropriate, based on monitoring or performance evaluations.

(5) The permittee shall regularly identify and illustrate SSO trends, including frequency, location, and volume.

(6) The permittee shall conduct periodic internal audits, appropriate to the size of the system and the number of SSOs. At a minimum, these audits must occur every five years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the permittee's compliance with the SSMP, including identification of any deficiencies in the SSMP and steps to correct them.

(7) The permittee is encouraged to communicate with the public, as needed, on the development, implementation, and performance of the SSMP. The permittee may establish a public outreach/communication plan which shall provide the public with the opportunity to provide input to the permittee as the SSMP is developed and implemented.

(8) The SSMP shall be prepared by, or under the direction of, a Utah certified professional engineer or another qualified professional.

(9) The SSMP must be completed by the deadlines listed in the Timeframe for Implementation in R317-801-6.

R317-801-6. Certification, Submission and Implementation Requirements.

6.1 Timeline for Notice, SSMP, and Certification. The permittee shall certify to DWQ that a SSMP is in place that is in compliance with the USMP by submitting a notice to DWQ within the time frames identified in the following time schedule:

Table 1. Timeframe for Implementation.

Task	Completion Dates by Population			
	>50,000 population	15,001 to 50,000 population	3,501 to 15,000 population	3,500 and Less population
Notice of Intent to be covered by General Permit	4 - 6 Months after effective date of rule			
Completion of SSMP (excluding SECAP)	24 months after effective date	30 months after effective date	36 months after effective date	42 months after effective date
Completion of SECAP when required	36 months after effective date	42 months after effective date	48 months after effective date	60 months after effective date

6.2 Significant Modifications. Significant modification of the SSMP must be public noticed by the permittee and approved by the permittee's governing body at a public meeting. A new notice certifying the revised SSMP is in place shall be sent to DWQ.

6.4 Incomplete Reports. If a permittee becomes aware that it failed to submit required information in any notice or report, the permittee shall promptly amend the notice or report.

6.5 Certification of Notices and Reports. All notices and reports submitted to DWQ shall be signed and certified as required in R317-8-3.4.

KEY: sewer collection systems, Utah Sewer Management Program
June 21, 2012 19-5-105
Notice of Continuation June 12, 2017

R343. Financial Institutions, Nondepository Lenders.
R343-11. Rule Designating Applicable Federal Law for a Mortgage Lender, Broker, or Servicer Subject to the Jurisdiction of the Department of Financial Institutions.
R343-11-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 70D-2-502(2)(b).

(2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 70D and the applicable chapters set forth in Section 70D-2-502(2).

(3) This rule designates which one or more federal laws the department may enforce and are applicable to mortgage lenders, brokers, or servers subject to the jurisdiction of the department.

R343-11-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Federal Law" means:

(a) a statute passed by the Congress of the United States; or

(b) a final regulation:

(i) adopted by an administrative agency of the United States government; and

(ii) published in the code of federal regulations or the federal register.

R343-11-3. Applicable Federal Law.

In accordance with Section 70D-2-502(2)(b), the following federal laws are applicable to mortgage lenders, brokers, or servers subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(4) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(5) Home Mortgage Disclosure Act, 12 U.S.C. Sec. 2801 et seq., and its implementing federal regulations.

KEY: financial institutions, federal law
June 21, 2017 70D-2-502(2)(b)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-600. Illegal Drug Operations Decontamination Standards.
R392-600-1. Authority and Purpose.

(1) This rule is authorized under Section 19-6-906.

(2) This rule sets decontamination and sampling standards and best management practices for the inspection and decontamination of property contaminated by illegal drug operations.

R392-600-2. Definitions.

The following definitions apply in this rule:

(1) "Background concentration" means the level of a contaminant in soil, groundwater or other media up gradient from a facility, practice or activity that has not been affected by the facility, practice or activity; or other facility, practice or activity.

(2) "Decontamination specialist" means an individual who has met the standards for certification as a decontamination specialist and has a currently valid certificate issued by the Waste Management and Radiation Control, as defined under Utah Code Subsection 19-6-906(2).

(3) "Chain-of-custody protocol" means a procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the time of possession of each person.

(4) "Characterize" means to determine the quality or properties of a material by sampling and testing to determine the concentration of contaminants, or specific properties of the material such as flammability or corrosiveness.

(5) "Combustible" means vapor concentration from a liquid that has a flash point greater than 100 degrees F.

(6) "Composite sample" means the combination of up to 3 individual wipe (grab) samples into one submission for analysis by a laboratory. The composite sample result will be the average or standardized result in units of micrograms of methamphetamine per 100 square centimeters.

(7) "Confirmation sampling" means collecting samples by a certified decontamination specialist during a preliminary assessment or upon completion of decontamination activities. Only confirmation sampling can be used to confirm that contamination is below the decontamination standards outlined in this rule.

(8) "Contaminant" means a hazardous material.

(9) "Contamination" or "contaminated" means polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards.

(10) "Corrosive" means a material such as acetic acid, acetic anhydride, acetyl chloride, ammonia (anhydrous), ammonium hydroxide, benzyl chloride, dimethylsulfate, formaldehyde, formic acid, hydrogen chloride/hydrochloric acid, hydrobromic acid, hydriodic acid, hydroxylamine, methylamine, methylene chloride (dichloromethane, methylene dichloride), methyl methacrylate, nitroethane, oxalylchloride,perchloric acid, phenylmagnesium bromide, phosphine, phosphorus oxychloride, phosphorus pentoxide, sodium amide (sodamide), sodium metal, sodium hydroxide, sulfur trioxide, sulfuric acid, tetrahydrofuran, thionyl chloride or any other substance that increases or decreases the pH of a material and may cause degradation of the material.

(11) "Decontamination" means treatment or removal of contamination by a decontamination specialist or owner of record to reduce concentrations of contaminants below the decontamination standards.

(12) "Decontamination standards" means the levels or concentrations of contaminants that must be met to demonstrate that contamination is not present or that decontamination has successfully removed the contamination.

(13) "Delineate" means to determine the nature and extent of contamination by sampling, testing, or investigating.

(14) "Easily cleanable" means an object and its surface that can be cleaned by detergent solution applied to its surface in a way that would reasonably be expected to remove dirt from the object when rinsed and to be able to do so without damaging the object or its surface finish.

(15) "Ecstasy" means 3,4-methylenedioxy-methamphetamine (MDMA).

(16) "EPA" means the United States Environmental Protection Agency.

(17) "EPA Method 8015B" means the EPA approved method for determining the concentration of various non-halogenated volatile organic compounds and semi-volatile organic compounds by gas chromatography/flame ionization detector.

(18) "EPA Method 6010B" means the EPA approved method for determining the concentration of various heavy metals by inductively coupled plasma.

(19) "EPA Method 8260B" means the EPA approved method for determining the concentration of various volatile organic compounds by gas chromatograph/mass spectrometer.

(20) "FID" means flame ionization detector.

(21) "Flammable" means vapor concentration from a liquid that has a flash point less than 100 degree F.

(22) "Grab Sample" means one sample collected from a single, defined area or media at a given time and location.

(23) "Hazardous materials" has the same meaning as "hazardous or dangerous materials" as defined in Section 58-37d-3; and includes any illegally manufactured controlled substances.

(24) "Hazardous waste" means toxic materials to be discarded as directed in 40 CFR 261.3.

(25) "HEPA" means high-efficiency particulate air and indicates the efficiency of an air filter or air filtration system.

(26) "Highly suggestive of contamination" means the presence of visible or olfactory signs indicative of contamination, locations in and around where illegal drug production occurred, where hazardous materials were stored or suspected of being used to manufacture illegal drugs, or areas that tested positive for contamination or other portions of the property that may be linked to processing and storage areas by way of the ventilation system or other activity that may cause contamination to be distributed across the property.

(27) "Impacted groundwater" means water present beneath ground surface that contains concentrations of a contaminant above the UGWQS.

(28) "Impacted soil" means soil that contains concentrations of a contaminant above background or EPA residential Risk Based Screening Concentrations as contained in the document listed in R392-600-8.

(29) "LEL/O2" means lower explosive limit/oxygen.

(30) "Negative pressure enclosure" means an air-tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.

(31) "Non-porous" means resistant to penetration of liquids, gases, powders and includes non-permeable substance or materials, that are sealed such as, concrete floors, wood floors, ceramic tile floors, vinyl tile floors, sheet vinyl floors, painted drywall or sheet rock walls or ceilings, doors, appliances, bathtubs, toilets, mirrors, windows, counter-tops, sinks, sealed wood, metal, glass, plastic, and pipes.

(32) "Not Highly Suggestive of Contamination" means areas outside of the main locations(s) where illegal drugs were produced and hazardous materials were stored or suspected of being used that do not reveal obvious visual or olfactory signs of contamination, but may, however, be contaminated by

residue from the manufacture or storage of illegal drugs or hazardous materials.

(33) "Non-confirmation sampling" means collecting samples by any party other than a certified decontamination specialist.

(34) "Owner of record" means (a) The owner of property as shown on the records of the county recorder in the county where the property is located; and (b) may include an individual, financial institution, company, corporation, or other entity.

(35) "Personal protective equipment" means various types of clothing such as suits, gloves, hats, and boots, or apparatus such as facemasks or respirators designed to prevent inhalation, skin contact, or ingestion of hazardous chemicals.

(36) "PID" means photo ionization detector.

(37) "Porous" means material easily penetrated or permeated by gases, liquids, or powders such as carpets, draperies, bedding, mattresses, fabric covered furniture, pillows, drop ceiling or other fiber-board ceiling panels, cork paneling, blankets, towels, clothing, and cardboard or any other material that is worn or not properly sealed.

(38) "Preliminary assessment" means an evaluation of a property to define all areas that are highly suggestive of contamination and delineate the extent of contamination. The preliminary assessment consists of an on-site evaluation conducted by the decontamination specialist or owner of record to gather information to demonstrate that contamination is not present above the decontamination standards or to enable development of a workplan outlining the most appropriate method to decontaminate the property.

(39) "Properly disposed" means to discard at a licensed facility in accordance with all applicable laws and not reused or sold.

(40) "Property" means: (a) any property, site, structure, part of a structure, or the grounds, surrounding a structure; and (b) includes single-family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(41) "Return air housing" means the main portion of an air ventilation system where air from the livable space returns to the air handling unit for heating or cooling.

(42) "Sample location" means the actual place where an environmental sample was obtained, including designation of the room, the surface (wall, ceiling, appliance, etc), and the direction and distance from a specified fixed point (corner, door, light switch, etc).

(43) "Services" means the activities performed by decontamination specialist in the course of decontaminating residual contamination from the manufacturing of illegal drugs or from the storage of chemicals used in manufacturing illegal drugs and includes not only the removal of any contaminants but inspections and sampling.

(44) "Toxic" means hazardous materials in sufficient concentrations that they can cause local or systemic detrimental effects to people.

(45) "UGWQS" means the Utah Ground Water Quality Standards established in R317-6-2.

(46) "VOA" means volatile organic analyte.

(47) "VOCs" means volatile organic compounds or organic chemicals that can evaporate at ambient temperatures used in the manufacture illegal drugs such as acetone, acetonitrile, aniline, benzene, benzaldehyde, benzyl chloride, carbon tetrachloride, chloroform, cyclohexanone, dioxane, ethanol, ethyl acetate, ethyl ether, Freon 11, hexane, isopropanol, methanol, methyl alcohol, methylene chloride, naphtha, nitroethane, petroleum ether, petroleum distillates, pyridine, toluene, o-toluidine, and any other volatile organic chemical that may be used to manufacture illegal drugs.

(48) "Waste" means refuse, garbage, or other discarded material, either solid or liquid.

R392-600-3. Preliminary Assessment Procedures.

(1) The local health department shall notify owner of record of tests results reported to the local health department indicating that a property is potentially contaminated.

(a) If the test results were from non-confirmation sampling, the owner of record may obtain confirmation sampling, performed by a certified decontamination specialist, within 10 days of receipt of the notice and provide the local health department with the confirmation sampling test results.

(b) If the test results were from confirmation sampling, the local health department shall direct the owner of record to decontaminate the property as outlined in the following sections.

(2) The decontamination specialist or owner of record shall determine the nature and extent of damage and contamination of the property from illegal drug operations by performing a preliminary assessment prior to decontamination activities. Contamination may be removed prior to approval of the work plan as necessary to abate an imminent threat to human health or the environment. If there was a fire or an explosion in the contaminated portion of the property that appears to have compromised its structural integrity, the decontamination specialist or owner of record shall obtain a structural assessment of the contaminated portion of the property prior to initiating the preliminary assessment.

(3) To conduct the preliminary assessment, the decontamination specialist or owner of record shall:

(a) request and review copies of any law enforcement, state agency or other report regarding illegal drug activity or suspected illegal drug activity at the property;

(b) evaluate all information obtained regarding the nature and extent of damage and contamination;

(c) determine the method of illegal drug manufacturing used;

(d) determine the chemicals involved in the illegal drug operation;

(e) determine specific locations where processing and illegal drug activity took place or was suspected and where hazardous materials were stored and disposed;

(f) use all available information to delineate areas highly suggestive of contamination;

(g) develop procedures to safely enter the property in order to conduct a preliminary assessment;

(h) wear appropriate personal protective equipment for the conditions assessed;

(i) visually inspect all portions of the property, including areas outside of any impacted structure to document where stained materials or surfaces are visible, drug production took place, hazardous materials were stored, and burn pits or illegal drug operation trash piles may have been or are currently present;

(j) determine whether the property contains a septic system on-site and if there has been a release to the system as a result of the illegal drug operations;

(k) determine the locations of the ventilation system components in the areas highly suggestive of contamination;

(l) conduct and document appropriate testing for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property using instruments such as a LEL/O2 meter, pH paper, PID, FID, or equivalent equipment; and

(m) if decontamination is not anticipated due to the lack of supporting evidence of decontamination, obtain confirmation samples to demonstrate compliance with the decontamination standards using the methodology specified in this rule.

(4) If the preliminary assessment does not reveal the presence of contamination above the decontamination standards

specified in this rule, the decontamination specialist or owner of record may request that the property be removed from the list of contaminated properties as specified in 19-6-903 provided that:

(a) a final report documenting the preliminary assessment is submitted to the local health department by the owner of record and decontamination specialist if one was involved in conducting the preliminary assessment; and

(b) the local health department concurs with the recommendations contained in the report specified in (a).

(5) If the preliminary assessment reveals the presence of contamination, the decontamination specialist or owner of record shall proceed according to R392-600-4 through R392-600-7. The contaminated portions of the property shall be kept secure against un-authorized access until the work plan has been submitted, any required permit is issued, and the property has been decontaminated to the standards established in this rule.

R392-600-4. Work Plan.

(1) Prior to performing decontamination of the property, the decontamination specialist or owner of record shall prepare a written work plan that contains:

(a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home, trailer or boat;

(b) if applicable, the certification number of the decontamination specialist who will be performing decontamination services on the contaminated portion of the property;

(c) copies of the decontamination specialist's current certification;

(d) photographs of the property;

(e) a description of the areas highly suggestive of contamination, and areas that are considered not highly suggestive of contamination, including any information that may be available regarding locations where illegal drug processing was performed, hazardous materials were stored and stained materials and surfaces were observed;

(f) a description of contaminants that may be present on the property;

(g) results of any testing conducted for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property, such as by a LEL/O2 meter, pH paper, PID, FID, or equivalent equipment;

(h) a description of the personal protective equipment to be used while in or on the contaminated portion of the property;

(i) the health and safety procedures that will be followed in performing the decontamination of the contaminated portion of the property;

(j) a detailed summary of the decontamination to be performed based on the findings and conclusions of the Preliminary Assessment, which summary shall include:

(i) all surfaces, materials or articles to be removed;

(ii) all surfaces, materials and articles to be cleaned on-site;

(iii) all procedures to be employed to remove or clean the contamination, including both areas highly suggestive of contamination as well as those areas that are not highly suggestive of contamination;

(iv) all locations where decontamination will commence;

(v) all containment and negative pressure enclosure plans; and

(vi) personnel decontamination procedures to be employed to prevent the spread of contamination;

(k) the shoring plan, if an assessment of the structural integrity was conducted and it was determined that shoring was necessary, including a written description or drawing that shows the structural supports required to safely occupy the building during decontamination;

(l) a complete description of the proposed post-decontamination confirmation sampling locations, parameters, techniques and quality assurance requirements;

(m) the names of all individuals who gathered samples, the analytical laboratory performing the testing, and a copy of the standard operating procedures for the analytical method used by the analytical laboratory;

(n) a description of disposal procedures and the anticipated disposal facility;

(o) a schedule outlining time frames to complete the decontamination process; and

(p) all available information relating to the contamination and the property based on the findings and conclusions of the preliminary assessment.

(2) Prior to implementing the work plan, it must first be:

(a) approved in writing by the owner of record and, if one is involved, the decontamination specialist who will execute the work plan; and

(b) submitted to the local health department with jurisdiction over the county in which the property is located.

(3) The owner of record, and any decontamination specialist involved in executing the work plan shall retain the work plan for a minimum of three years after completion of the work plan and the removal of the property from the contaminated-properties list.

(4) All information required to be included in the work plan shall be keyed to or contain a reference to the appropriate subsection of this rule.

R392-600-5. Decontamination Procedures.

(1) The decontamination specialists, and owner of record shall comply with all applicable federal, state, municipal, and local laws, rules, ordinances, and regulations in decontaminating the property.

(2) The decontamination specialist or owner of record shall be present on the property during all decontamination activities.

(3) The decontamination specialist or owner of record shall conduct the removal of the contamination from the property, except for porous materials from areas not highly suggestive of contamination that may be cleaned as outlined in sub-section R392-600-5(12).

(4) The decontamination specialist or owner of record shall see that doors or other openings from areas requiring decontamination shall be partitioned from all other areas with at least 4-mil plastic sheeting or equivalent before beginning decontamination to prevent contamination of portions of the property that have not been impacted by illegal drug operations.

(5) Ventilation Cleaning Procedures.

(a) Air registers shall be removed and cleaned as outlined in subsection R392-600-5(12).

(b) All air register openings shall be covered by temporary filter media.

(c) A fan-powered HEPA filter collection machine shall be connected to the ductwork to develop negative air pressure in the ductwork.

(d) Air lances, mechanical agitators, or rotary brushes shall be inserted into the ducts through the air register openings to loosen all dirt, dust and other materials.

(e) The air handler units, including the return air housing, coils, fans, systems, and drip pan shall be cleaned as required in subsection R392-600-5(12).

(f) All porous linings or filters in the ventilation system shall be removed and properly disposed.

(g) The ventilation system shall be sealed off at all openings with at least 4-mil plastic sheeting, or other barrier of equivalent strength and effectiveness, to prevent recontamination until the contaminated portion of the property

meets the decontamination standards in R392-600-6(2) and(3).

(6) Procedures for Areas Highly Suggestive of Contamination.

(a) All porous materials shall be removed and properly disposed. On site cleaning of this material is not allowed.

(b) All stained materials from the illegal drug operations shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392-600-6(2) and (3). Only smooth and easily cleanable drug operation material surfaces may be decontaminated on site and only in accordance with R392-600-5(12).

(c) All non-porous surfaces may be cleaned to the point of stain removal and left in place or removed and properly disposed. Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392-600-5(12). After on-site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify compliance with the decontamination standards contained in R392-600-6(2) and (3).

(d) All exposed concrete surfaces shall be thoroughly cleaned as outlined in R392-600-5(12) and tested to meet the decontamination standards contained in R392-600-6(2) and (3) or may be removed and properly disposed.

(e) All appliances shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392-600-6(2) and (3). Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392-600-5(12). After on-site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify compliance with the decontamination standards contained in R392-600-6(2) and (3). For appliances such as ovens that have insulation, a 100 square centimeter portion of the insulation shall also be tested. If the insulation does not meet the decontamination standards contained in R392-600-6(2) and R392-600-6(3), the insulated appliances shall be removed and properly disposed.

(7) Structural Integrity and Security Procedures.

If, as a result of the decontamination, the structural integrity or security of the property is compromised, the decontamination specialist or owner of record shall take measures to remedy the structural integrity and security of the property.

(8) Procedures for Plumbing, Septic, Sewer, and Soil.

(a) All plumbing inlets to the septic or sewer system, including sinks, floor drains, bathtubs, showers, and toilets, shall be visually assessed for any staining or other observable residual contamination. All plumbing traps shall be assessed for VOC concentrations with a PID or FID in accordance with Section R392-600-6(7). All plumbing traps shall be assessed for mercury vapors in accordance with Section R392-600-6(10) by using a mercury vapor analyzer unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred. If VOC concentrations or mercury vapor concentrations exceed the decontamination standards contained in R392-600-6(2) and (3), the accessible plumbing and traps where the excess levels are found shall be removed and properly disposed, or shall be cleaned and tested to meet the decontamination standards contained in R392-600-6(2) and (3).

(b) The decontamination specialist or owner of record shall obtain documentation from the local health department or the local waste water company describing the sewer disposal system for the dwelling and include it in the final report. If the dwelling is connected to an on-site septic system, a sample of the septic tank liquids shall be obtained and tested for VOC concentrations unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred.

(c) If VOCs are not found in the septic tank sample or are found at concentrations less than UGWQS and less than 700 micrograms per liter for acetone, no additional work is required in the septic system area, unless requested by the owner of the property.

(d) If VOCs are found in the septic tank at concentrations exceeding the UGWQS or exceeding 700 micrograms per liter for acetone the following applies:

(i) The decontamination specialist or owner of record shall investigate the septic system discharge area for VOCs, lead, and mercury unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operation;

(ii) The horizontal and vertical extent of any VOCs, mercury, and lead detected in the soil samples shall be delineated relative to background or EPA residential risk based screening concentrations contained in the document listed in R392-600-8.

(iii) If any of the VOCs, mercury, and lead used in the illegal drug operations migrated down to groundwater level, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination.

(iv) After complete characterization of the release, the decontamination specialist or owner of record shall remediate the impacted soils to concentrations below background or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8 and any impacted groundwater to concentrations below the UGWQS and below 700 micrograms per liter for acetone.

(v) The contents of the septic tank shall be removed and properly disposed.

(e) The decontamination specialist or owner of record shall also notify the Utah Department of Environmental Quality, Division of Water Quality, if a release has occurred as a result of illegal drug operations to a single family septic system or a multiple family system serving less than 20 people.

(f) All sampling and testing pursuant to this section shall be performed in accordance with EPA sampling and testing protocol.

(9) Procedures for burn areas, trash piles and bulk wastes.

(a) The decontamination specialist or owner of record shall characterize, remove, and properly dispose of all bulk wastes remaining from the activities of the illegal drug operations or other wastes impacted by compounds used by the illegal drug operations.

(b) The decontamination specialist or owner of record shall examine the property for evidence of burn areas, burn or trash pits, debris piles, and stained areas suggestive of contamination. The decontamination specialist or owner of record shall test any burn areas, burn or trash pits, debris piles or stained areas with appropriate soil sampling and testing equipment, such as a LEL/O2 meter, pH paper, PID, FID, mercury vapor analyzer, or equivalent equipment to determine if the area is contaminated.

(c) If the burn areas, burn or trash pits, debris piles, or stained areas are not in a part of the property that has otherwise been determined to be highly suggestive of contamination, the decontamination specialist shall recommend to the owner of the property that these areas be investigated.

(d) If the burn areas, burn or trash pits, debris piles or stained areas are part of the contaminated portion of the property, the decontamination specialist or owner of record shall investigate and remediate these areas.

(e) The decontamination specialist or owner of record shall investigate burn areas, burn or trash pits, debris piles, or

stained areas for the VOCs used by the illegal drug operations and lead and mercury, unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operations.

(f) The decontamination specialist or owner of record shall delineate the horizontal and vertical extent of any VOCs, lead, or mercury detected in the soil samples relative to background concentrations or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8.

(g) If any of the compounds used by the illegal drug operation migrated into groundwater, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination relative to the UGWQS and relative to the maximum contaminant level of 700 micrograms per liter for acetone.

(h) After complete characterization of the release, the decontamination specialist or owner of record shall remediate contaminated soils to background or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8, and contaminated groundwater to concentrations at or below the UGWQS and at or below 700 micrograms per liter for acetone.

(i) All sampling and testing conducted under this section shall be performed in accordance with current EPA sampling and testing protocol.

(10) Procedures for areas not highly suggestive of contamination.

(a) Porous materials with no evidence of staining or contamination may be cleaned by HEPA vacuuming and one of the following methods:

(i) Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.

(ii) Detergent and water solution: porous materials shall be washed in a washing machine with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.

(b) All non-porous surfaces such as floors, walls, ceilings, mirrors, windows, doors, appliances, and non-fabric furniture shall be cleaned as outlined in subsection R392-600-5(12).

(c) Doors or other openings to areas with no visible contamination shall be partitioned from all other areas with at least 4-mil plastic sheeting or equivalent after being cleaned to avoid re-contamination.

(d) Spray-on acoustical ceilings shall be left undisturbed, and shall be sampled and tested for asbestos and for contamination to determine whether ceilings meet the decontamination standards contained in R392-600-6(2) and (3), and if in need of removal, whether asbestos remediation protocols are applicable. If the materials exceed the standards, the decontamination specialist or owner of record shall properly remove and dispose of them.

(e) All exposed concrete surfaces shall be thoroughly cleaned as outlined in subsection R392-600-5(12).

(11) Decontamination procedures for motor vehicles.

If an illegal drug operation is encountered in a motor vehicle, the decontamination specialist or owner of record shall conduct a Preliminary Assessment in the manner described in this rule to determine if the vehicle is contaminated. If it is determined that the motor vehicle is contaminated and the vehicle cannot be cleaned in a manner consistent with this rule, the motor vehicle may no longer be occupied. The vehicle shall also be properly disposed.

(12) Cleaning Procedure.

For all items, surfaces or materials that are identified as easily cleanable and for which the work plan indicates they will be decontaminated on site, the decontamination specialist or owner of record shall wash them with a detergent and water solution and then thoroughly rinse them. This procedure shall be repeated at least two additional times using new detergent solution and rinse water. The decontamination specialist or owner of record shall test all surfaces where decontamination on site has been attempted to verify compliance with the decontamination standards in R392-600-6(2) and R392-600-6(3).

(13) Waste Characterization and Disposal Procedures.

The Hazardous Waste Rules of R315-1 through R315-101, the Solid Waste Rules of R315-301 through R315-320 and the Illegal Drug Operations Decontamination Standards regulate the management and disposal of hazardous waste and contaminated debris generated during decontamination of an illegal drug operations. The decontamination specialist and owner of record shall comply with these rules and meet the following criteria.

(a) No waste, impacted materials or contaminated debris from the decontamination of illegal drug operations may be removed from the site or waste stream for recycling or reuse without the written approval of the local Health Department.

(b) All items removed from the illegal drug operations and waste generated during decontamination work shall be properly disposed.

(c) All liquid waste, powders, pressurized cylinders and equipment used during the production of illegal drugs shall be properly characterized by sampling or testing prior to making a determination regarding disposal or the waste shall simply be considered hazardous waste and properly disposed, except the waste shall not be deemed to be household hazardous waste.

(d) All impacted materials and contaminated debris that are not determined by the decontamination specialist or owner of record to be a hazardous waste may be considered a solid waste and properly disposed.

(e) All Infectious Waste shall be managed in accordance with Federal, State and local requirements.

(f) The disturbance, removal and disposal of asbestos must be done in compliance with all Federal, State, and local requirements including the requirements for Asbestos Certification, Asbestos Work Practices and Implementation of Toxic Substances Control Act, Utah Administrative Code R307-801.

(g) The removal and disposal of lead based paint must be done in compliance with all Federal, State, and local requirements including the requirements for Lead-Based Paint Accreditation, Certification and Work Practice Standards, Utah Administrative Code R307-840.

(h) The decontamination specialist and owner of record shall comply with all Federal, State, Municipal, County or City codes, ordinances and regulations pertaining to waste storage, manifesting, record keeping, waste transportation and disposal.

R392-600-6. Confirmation Sampling and Decontamination Standards.

(1) The decontamination specialist shall conduct confirmation sampling after decontamination to verify that concentrations are below the decontamination standards prior to the submittal of a final report. Samples are not required if a contaminated surface has been removed and replaced, unless there is evidence that the area has been re-contaminated. All decontaminated areas and materials, areas not highly suggestive of contamination, and surfaces that have not been removed shall be sampled for compliance with the standards in Table 1.

(2) If the decontamination standards are not achieved, the decontamination specialist or owner of record shall perform additional decontamination and re-sample to confirm the surface or area meets the decontamination standards specified in Table 1.

TABLE 1

COMPOUND	DECONTAMINATION STANDARD
Red Phosphorus	Removal of stained material or cleaned as specified in this rule such that there is no remaining visible residue.
Iodine Crystals	Removal of stained material or cleaned as specified in this rule such that there is no remaining visible residue.
Methamphetamine	Less than or equal to 1.0 microgram Methamphetamine per 100 square centimeters
VOCs in Air	Less than or equal to 1 ppm
Corrosives	Surface pH between 6 and 8
Ecstasy	Less than or equal to 0.1 microgram Ecstasy per 100 square centimeters

(3) The decontamination specialist or owner of record shall also conduct sampling and testing for all of the metals listed in Table 2 unless there is clear evidence that these metals were not used in the illegal drug operations. If Table 2 contaminants are present, the decontamination specialist or owner of record shall decontaminate the affected areas and sample until they meet the decontamination standards in Table 2.

TABLE 2

COMPOUND	DECONTAMINATION STANDARD
Lead	Less than or equal to 4.3 micrograms Lead per 100 square centimeters
Mercury	Less than or equal to 3.0 micrograms Mercury per cubic meter of air

(4) Confirmation sampling procedures.

(a) All sample locations shall be photographed.

(b) All samples shall be obtained from areas representative of the materials or surfaces being tested. Samples shall be collected from materials or surfaces using wipe samples and shall be biased toward areas where contamination is suspected or confirmed or was known to be present prior to decontamination.

(c) All samples shall be obtained, preserved, and handled and maintained under chain-of-custody protocol in accordance with industry standards for the types of samples and analytical testing to be conducted.

(d) The individual conducting the sampling shall wear a new pair of gloves to obtain each sample.

(e) All reusable sampling equipment shall be decontaminated prior to sampling.

(f) All testing equipment shall be properly equipped and calibrated for the types of compounds to be analyzed.

(g) Cotton gauze, 3" x 3" 12-ply or 4" x 4" 8-ply, in sterile packages, shall be used for all wipe sampling. The cotton gauze shall be wetted with analytical grade methanol for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(h) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50-mL polypropylene disposable centrifuge tubes or 40-mL VOA glass vials. Plastic bags shall not be used. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be refrigerated until delivered to an analytical laboratory.

(i) Each sample shall be analyzed for methamphetamine, ephedrine, pseudoephedrine, and ecstasy depending upon the type of illegal drug operations using NIOSH Manual of Analytical Method (NMAM) 9106, 9109 or 9111 or equivalent method approved by the Utah Department of Health.

(5) Confirmation sampling from areas highly suggestive of contamination.

(a) Grab samples or composite samples are allowed for confirmation testing of highly suggestive contaminated areas.

(b) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from each room of the property where illegal drug operations occurred, hazardous materials were stored and where staining or contamination are or were present. The three samples shall be obtained from a nonporous section of the floor, one wall, and the ceiling in each room or any other location where contamination is suspected.

(c) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from different areas of the ventilation system, unless the system serves more than one unit or structure. If the system serves more than one unit or structure, samples shall be collected from a representative distribution of the system as well as the corresponding areas that it serves until the contamination is delineated, decontaminated, and determined to be below the decontamination standards established in this rule.

(d) If there is a kitchen, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, or stove top, and from the floor in front of the stove top or any other location where contamination is suspected.

(e) If there is a bathroom, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, toilet, or the shower/bath tub and any other location where contamination is suspected.

(f) If there are any appliances, one 10 cm. x 10 cm. area (100 square centimeters) shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, each wipe sample may be a composite of up to three 100 square centimeter areas on three separate appliances, provided that the surfaces most likely to be contaminated are tested.

(g) If there is any other enclosed space where illegal drug operations occurred, hazardous materials were stored, or where staining or contamination is present, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated.

(h) Each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50-mL polypropylene disposable centrifuge tubes or 40-mL VOA glass vials. Plastic bags shall not be used.

(6) Confirmation sampling from areas not highly suggestive of contamination shall be collected in a manner consistent with the confirmation sampling described in Section R392-600-6(5). The samples may be combined together to form one composite sample per room or sampling area. The composite sample result shall be the averaged or standardized result provided by the laboratory or calculated from the total recovery value.

(7) VOC sampling and testing procedures.

(a) A properly calibrated PID or FID capable of detecting VOCs shall be used for testing. The background concentration of VOCs shall be obtained by testing three exterior areas outside the areas highly suggestive of contamination and in areas with no known or suspected sources of VOCs. All VOC readings shall be recorded for each sample location.

(b) At least three locations in areas highly suggestive of contamination shall be tested for VOC readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for VOCs

by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(8) Testing procedures for corrosives.

(a) Surface pH measurements shall be made using deionized water and pH test strips with a visual indication for a pH between 6 and 8. The pH reading shall be recorded for each sample location.

(b) For horizontal surfaces, deionized water shall be applied to the surface and allowed to stand for at least three minutes. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(c) For vertical surfaces, a cotton gauze, 3" x 3" 12-ply or 4" x 4" 8-ply, in sterile packages, shall be wetted with deionized water and wiped over a 10 cm. x 10 cm. area at least five times in two perpendicular directions. The cotton gauze shall then be placed into a clean sample container and covered with clean deionized water. The cotton gauze and water shall stand in the container for at least three minutes prior to testing. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(d) pH testing shall be conducted on at least three locations in each room within the areas highly suggestive of contamination.

(9) Lead Sampling and Testing Procedures.

(a) Unless there is clear evidence that lead was not used in the manufacturing of methamphetamine, or ecstasy at the illegal drug operations, lead sampling shall be conducted as follows:

(i) Cotton gauze, 3" x 3" 12-ply or 4" x 4" 8-ply, in sterile packages shall be used for wipe sampling. The cotton gauze shall be wetted with analytical grade 3 per cent nanograde nitric acid for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(ii) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be sampled in each room within the areas highly suggestive of contamination; and

(b) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be delivered to an analytical laboratory that uses EPA Method 6010B or an equivalent method approved by the Utah Department of Health.

(c) The sample shall be analyzed for lead using EPA Method 6010B or equivalent.

(10) Mercury Sampling and Testing Procedures.

(a) A properly calibrated mercury vapor analyzer shall be used for evaluating the decontaminated areas for the presence of mercury. All mercury readings shall be recorded for each sample location.

(b) At least three locations in each room within the areas highly suggestive of contamination shall be tested for mercury vapor readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(11) Septic tank sampling and testing procedures.

(a) All sampling and testing shall be performed in accordance with current EPA sampling and testing protocol.

(b) The liquid in the septic tank shall be sampled with a new clean bailer or similar equipment.

(c) The liquid shall be decanted or poured with minimal turbulence into three new VOA vials properly prepared by the analytical laboratory.

(d) The VOA vials shall be filled so that there are no air bubbles in the sealed container. If air bubbles are present, the vial must be emptied and refilled.

(i) The sample vials shall be properly labeled with at least the date, time, and sample location.

(ii) The sample vials shall be refrigerated until delivered to the analytical laboratory.

(iii) The sample shall be analyzed using EPA Method 8260 or equivalent.

(12) Confirmation sampling by Local Health Departments.

The local health department may also conduct confirmation sampling after decontamination is completed and after the final report is submitted to verify that the property has been decontaminated to the standards outlined in this rule.

R392-600-7. Final Report.

(1) A final report shall be:

(a) prepared by the decontamination specialist or owner of record upon completion of the decontamination activities;

(b) submitted to the owner of the decontaminated property and the local health department of the county in which the property is located; and

(c) retained by the decontamination specialist and owner of record for a minimum of three years.

(2) The final report shall include the following information and documentation:

(a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or motorized vehicle;

(b) the name and certification number of the decontamination specialist who performed the decontamination services on the property;

(c) a detailed description of the decontamination activities conducted at the property, including any cleaning performed in areas not highly suggestive of contamination;

(d) a description of all deviations from the approved work plan;

(e) photographs documenting the decontamination services and showing each of the sample locations,

(f) a drawing or sketch of the areas highly suggestive of contamination that depicts the sample locations and areas that were decontaminated;

(g) a description of the sampling procedure used for each sample;

(h) a copy of the testing results from testing all samples, including testing for VOCs, corrosives, and if applicable, lead and mercury, and testing performed by an analytical laboratory;

(i) a written discussion interpreting the test results for all analytical testing on all samples;

(j) a copy of any asbestos sampling and testing results;

(k) a copy of the analytical laboratory test quality assurance data on all samples and a copy of the chain-of-custody protocol documents;

(l) a summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading, weight tickets, and manifests for all materials removed from the property;

(m) a summary of the decontamination specialist or owner of record's observation and testing of the property for evidence of burn areas, burn or trash pits, debris piles, or stained areas;

(n) a written discussion and tables summarizing the confirmation sample results with a comparison to the decontamination standards outlined in this rule; and

(o) an affidavit from the decontamination specialist and owner of record that the property has been decontaminated to the standards outlined in this rule.

(3) All information required to be included in the final report shall be keyed to or contain a reference to the appropriate subsection of this rule.

R392-600-8. Reference.

The document: U.S. Environmental Protection Agency. Region 9: Superfund Preliminary Remediation Goals (PRG) Table, October 2004, is incorporated by reference.

KEY: illegal drug operations, methamphetamine decontamination
June 21, 2017 19-6-906

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the April 1, 2017, versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(25) Medical Transportation Utah Medicaid Provider Manual;

(26) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

(27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;

(30) Podiatric Services Utah Medicaid Provider Manual;

(31) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(34) School-Based Skills Development Services Utah Medicaid Provider Manual;

(35) Section I: General Information Utah Medicaid Provider Manual;

(36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(38) Vision Care Services Utah Medicaid Provider Manual;

(39) Women's Services Utah Medicaid Provider Manual;

(40) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(41) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and

language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Hospital Services Utah Medicaid Provider Manual in effect at the time service is rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider

manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of

procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

(a) Rule R380-200;

(b) Rule R380-210;

(c) Rule R386-705;

(d) Rule R428-10; and

(e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

R414-1-29. Medicaid Policy for Reconstructive and Cosmetic Procedures.

(1) Reconstructive or restorative services are medically necessary and performed on abnormal structures of the body to improve and restore bodily function or to correct deformity resulting from disease, trauma, congenital anomaly, or previous therapeutic intervention.

(2) Cosmetic procedures are performed with the primary intent to improve appearance, are not covered services, and include non-medically necessary procedures performed in the same episode as a covered procedure.

(3) Coverage for reconstructive breast procedures related to cancer includes:

(a) reconstruction of the breast on which the procedure is performed; and

(b) reconstruction of the breast on which the procedure is not performed to produce a symmetrical appearance and prostheses.

R414-1-30. Face-to-Face Requirements for Home Health Services.

(1) Orders for home health services and certain durable medical equipment (DME) must be in accordance with 42 CFR 440.70.

(2) DME that requires face-to-face shall be the same as DME items required by Medicare.

(3) No home health agency or DME supplier may report services for reimbursement until they meet the face-to-face requirement.

KEY: Medicaid
July 1, 2017 **26-1-5**
Notice of Continuation February 15, 2017 **26-18-3**
26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-2A. Inpatient Hospital Services.
R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in Section R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital, as noted by InterQual Criteria as noted in Section R414-1-12.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-3. Client Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-2A-4. Hospital Admission Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

R414-2A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness. Inpatient hospital care is limited to medical treatment of symptoms that will lead to medical stabilization of the patient. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Services performed for a patient by the admitting hospital or by an entity wholly-owned or wholly-operated by the hospital within three days of patient admission, are considered inpatient services. This three-day window applies to diagnostic and non-diagnostic services that are clinically related to the reason for the patient's inpatient admission regardless of whether the inpatient and outpatient diagnoses are the same.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours.

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the patient is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Section 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by Rule R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

R414-2A-8. Coinsurance.

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in Rule R414-1.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, please refer to Section R414-1-12.

(5) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(6) If an observation stay meets the intensity and severity for inpatient hospitalization, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

KEY: Medicaid
July 1, 2017 **26-1-5**
Notice of Continuation October 10, 2012 **26-18-3**
26-18-3.5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-3A. Outpatient Hospital Services.

R414-3A-1. Introduction and Authority.

This rule defines the scope of outpatient hospital services available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

(1) "Allowed charges" mean actual charges submitted by the provider less any charges for non-covered services.

(2) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for children under the age of 21.

(3) "Clinical Laboratory Improvements Act" (CLIA) is the Centers for Medicare and Medicaid Services (CMS) program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(5) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(6) "Outpatient" is defined in 42 CFR 440.20.

(7) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-3A-3. Client Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-3A-4. Program Access Requirements.

(1) The Department reimburses for outpatient hospital services and supplies only if they are:

(a) furnished in a hospital;

(b) provided by hospital personnel by or under the direction of a physician or dentist;

(c) provided as evaluation and management of illness or injury under hospital medical staff supervision and according to the written orders of a physician or dentist.

(2) All outpatient hospital services are subject to review by the Department.

R414-3A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for outpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic or reconstructive procedures are set forth in Section R414-1-29.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening; or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a facility in which the hyberbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(11) Take home supplies and durable medical equipment are not reimbursable.

(12) Prescriptions are not a covered Medicaid service for a client who is eligible to receive emergency services only.

R414-3A-7. Prior Authorization.

Prior authorization must be obtained on certain medical and surgical procedures in accordance with Section R414-1-14.

R414-3A-8. Copayment Policy.

Each Medicaid client is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-3A-9. Reimbursement for Services.

Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid

July 1, 2017 **26-1-5**

Notice of Continuation October 10, 2012 **26-18-2.3**

26-18-3(2)

26-18-4

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10. Physician Services.
R414-10-1. Introduction and Authority.

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid members. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, Occupations and Professions.

(2) Physician services are a mandatory Medicaid program authorized by Section 1901 of the Social Security Act, Subsections 1861(q)(r) and 1905(a)(5)(6) of the Social Security Act, and Sections 26-1-5 and 26-18-3.

R414-10-2. Definitions.

In addition to the definitions in Rule R414-1, the following definitions apply to this rule:

(1) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.

(2) "Global surgical procedures" means preoperative office visits and preparation, the operation itself, local infiltration, topical or regional anesthesia when used, and normal follow-up care.

(3) "Physician services", whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services performed by a Medicaid provider that meet the following standards:

(a) Services are performed within the scope of the physician's license as defined in Title 58, Occupations and Professions;

(b) Services are performed by a doctor of medicine or osteopathy, a doctor of dental surgery or of dental medicine, a doctor of podiatric medicine, a doctor of optometry, a chiropractor, or;

(c) Services include medical care, or any other type of remedial care furnished by licensed practitioners.

(4) "Practice as a physician assistant" means:

(a) acting as an agent of the supervising physician, and when under the authority of a substitute supervising physician, acting in accordance with a delegation of services agreement; and

(b) performing professional duties within the conduct of a physician assistant in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition.

(5) "Services" means the types of medical assistance specified in Subsection 1905(a) of the Social Security Act and interpreted in 42 CFR 440.

R414-10-3. Member Eligibility Requirements.

Physician services are available to categorically and medically needy eligible individuals.

R414-10-4. Program Access Requirements.

(1) An eligible Medicaid member may obtain physician services from any Utah Medicaid provider.

(2) An individual who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition, as stated in Section R414-1-7.

(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.

R414-10-5. Service Coverage and Limitations.

(1) General Information.

(a) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(b) Cosmetic or reconstructive procedures, see Section R414-1-30.

(c) Experimental or medically unproven physician services, see Rule R414-1A.

(d) Program limitations and non-covered services are maintained in the Coverage and Reimbursement Code Lookup and updated by notification through the Medicaid Information Bulletin. Medicaid does not cover the following types of services:

(i) Services rendered during a period in which an individual is ineligible for Medicaid;

(ii) Medically unnecessary or unreasonable services;

(iii) Services that fail to meet existing standards of professional practice;

(iv) Services rendered without required prior authorization;

(v) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(vi) Services claimed fraudulently;

(vii) Services that represent abuse or overuse;

(viii) Services rejected or disallowed by Medicare when the rejection is based on any of the reasons listed in Section R414-10-5;

(ix) Services for which third-party payers are primarily responsible for coverage, such as Medicare, private health insurance, and liability insurance pursuant to Rule R527-936. Medicaid may make a partial payment up to the Medicaid maximum if a third party does not reach the payment limit;

(x) Related services, supplies, or institutional costs during a post-operative recovery period, if the service or procedure is not covered for any of the reasons specified in Section R414-10-5, or due to policy exclusion; and

(xi) Paternity tests.

(e) Alcoholism or drug dependency in an inpatient setting, see Subsection R414-2A-7(2).

(f) A physician assistant who works under the supervision of physician, or as a staff member of a facility, is not an independent practitioner and cannot bill independently.

(i) Service limitations or exclusions that apply to a physician shall also apply to the physician assistant.

(ii) Only a licensed physician may perform the specialty medical services of an assistant surgeon that include complex surgical procedures, while a physician assistant may neither perform specialty medical services nor assist in a surgical procedure.

(iii) Medicaid, as it considers necessary, may apply exceptions to the duties of a supervised-physician assistant in rural areas or in federally-designated health professional shortage areas.

(2) Family Planning Services.

(a) Medicaid does not cover the following family planning services:

(i) Surgical procedures for the reversal of previous elective sterilization on both males and females;

(ii) Infertility studies;

(iii) In vitro fertilization;

(iv) Artificial Insemination; and

(v) Surrogate motherhood, including all services, tests, and related charges.

(3) Anesthesia.

(a) Medicaid may only cover anesthesia services performed by a licensed, qualified provider.

(b) Medicaid does not cover anesthesia standby services.

(4) Surgical Services.

(a) Surgical procedures.

(i) Surgical services are global services. Global services include:

(b) preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as hospital admission;

(c) the operation;

(d) any topical, local, or regional anesthesia; and

(e) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure.

(f) Interpretation of "global" services:

(i) A physician may not bill for an office visit the day before surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "global" surgical service;

(ii) Only the consulting physician may bill for consultation services when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, the consulting physician may only use admission codes and subsequent care codes;

(iii) Office visits after hospitalization that relate to the same diagnosis are part of the global service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(iv) Complications, exacerbations, recurrence, or the presence of other diseases or injuries, which require services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(v) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(vi) Preoperative examination and planning are covered as separate services only under the following circumstances:

(I) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis to determine the need for a specific surgical procedure, or to prepare the patient;

(II) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or

(III) When diagnostic procedures are not part of the basic surgical procedure.

(5) Maternity Care and Delivery.

(i) Medicaid does not cover early elective delivery, whether vaginal or caesarean, before 39 weeks.

(6) Abortion, Sterilization and Hysterectomy.

(i) For information on abortion policy, see Rule R414-1B.

(ii) Sterilization and hysterectomy procedures must meet the requirements of 42 CFR 441, Subpart F.

(7) Transplant Services.

(i) Organ transplant services must meet the requirements of Rule R414-10A.

(8) Medicine.

(a) Psychiatric Services. The following services may be covered as a medical benefit:

(i) Physician-ordered psychiatric services for a patient hospitalized in a non-psychiatric unit of a hospital;

(ii) Mental health services that target the diagnosis or treatment of developmental disability or organic disorder; and

(iii) Psychosocial evaluations requested before organ transplantations, psychiatric evaluations before other medical services or surgical procedures, and evaluations for individuals with conditions that require chronic pain management services.

(b) Pain Management Services.

(i) Medicaid covers pain management for delivery and acute postoperative pain.

(ii) Medicaid covers treatment for chronic pain.

(c) Medications.

(i) Medicaid may cover prescription medications subject to the requirements of Rule R414-60.

KEY: Medicaid
July 1, 2017 **26-1-5**
Notice of Continuation October 24, 2016 **26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-14. Home Health Services.

R414-14-1. Introduction and Authority.

(1) Home health services are part-time intermittent health care services that are based on medical necessity and provided to eligible persons in their places of residence when the home is the most appropriate and cost effective setting that is consistent with the client's medical need. The goals of home health care are to minimize the effects of disability or pain; promote, maintain, or protect health; and prevent premature or inappropriate institutionalization.

(2) This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.70 and 42 CFR, Part 484. 42 U.S.C. Secs. 1395u, 1395x, and 1395y also authorize home health services.

R414-14-2. Definitions.

The following definition applies to home health services. In addition, the Department adopts the definitions in the Home Health Agencies Utah Medicaid Provider Manual and incorporates them by reference in Section R414-1-5.

(1) "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.

(2) "Home health services" as defined in 42 CFR 440.70(b).

R414-14-3. Client Eligibility Requirements.

Home health services are available to categorically eligible and medically needy individuals.

R414-14-4. Program Access Requirements.

(1) Home health service shall be provided only to an individual who is under the care of a physician. The attending physician shall write the orders on which a plan of care is established and certify the necessity for home health services.

(2) The home health agency may accept a recipient for home health services only if there is a reasonable expectation that a recipient's needs can be met.

(3) The attending physician and home health agency personnel must review and sign a total plan of care as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.

(4) The home health agency must provide quality, cost-effective care and a safe environment in the home through registered or licensed practical nurses who have adequate training, knowledge, judgement, and skill.

(5) Home health aide services may only be provided pursuant to written instructions and under the supervision of a registered nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.

(6) Over the long term service period, the cost to provide the required service in the patient's home must be no greater than the cost to meet the client's medical needs in an alternative setting.

(7) A home health agency may provide an initial assessment visit without prior authorization to assess the patient's needs and establish a plan of care. After the initial visit, all home health care and service must be based on prior authorization.

(8) The home health agency must meet the face-to-face requirement, as stated in Section R414-1-30, or the Department may deny or recover reimbursement.

R414-14-5. Service Coverage.

(1) Two levels of home health service are covered: Skilled Home Health Services and Supportive Maintenance Home Health Services.

(2) Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

(3) Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions and provides necessary care for the patient.

(4) Supportive maintenance home health care serves those patients who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching, or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

(5) IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, and all requirements of the home health program must be met in relation to orders, plan of care, and 60-day review and recertification.

(6) Physical therapy and speech-language pathology services are occasionally indicated and approved for the patient needing home health services. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care. Occupational therapy and speech-language pathology services in the home are available only to clients who are pregnant women or who are eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(7) Medical supplies utilized for home health service must be consistent with physician orders, and approved as part of the plan of care.

(8) Medical supplies provided by the home health agency do not require prior approval, but are limited to:

(a) supplies used during the initial visit to establish the plan of care;

(b) supplies that are consistent with the plan of care; and

(c) non-durable medical equipment.

(9) Supportive maintenance home health services is limited in time equal to one visit per day determined by care needs and care giver participation.

(10) A registered nurse employed by an approved, certified home health agency must supervise all home health services. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

(11) Only one home health provider (agency) may provide service to a patient during any period of time. However, a subcontractor of a home health provider may provide service if the original agency is the only provider that bills for services. A second provider or agency requesting approval of service will be denied.

(12) Home health care provided to a patient capable of self-care is not a covered Medicaid benefit.

(13) Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

(14) Housekeeping or homemaking services are not covered home health benefits.

(15) Occupational therapy is not a covered Medicaid benefit except for children covered under CHEC for medically necessary service.

(16) Home health nursing service beyond the initial evaluation visit requires prior authorization.

(17) All home health service beyond the initial visit, including supplies and therapies, shall be in the plan of care that the home health agency submits for prior authorization. After initial authorization, if level of service needs change and additional services are required, the home health agency must submit a new prior authorization request.

(18) A home health agency may provide therapy services only in accordance with medical necessity and after receiving prior authorization.

R414-14-6. Reimbursement for Services.

Reimbursement for home health services shall be provided as documented in Attachment 4.19-B of the Medicaid State Plan.

KEY: Medicaid
July 1, 2017 **26-1-5**
Notice of Continuation May 30, 2014 **26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-15. Residents Personal Needs Fund.
R414-15-1. Introduction and Authority.

(1) This policy ensures proper administration of the personal funds of a Medicaid client who is a resident in a long term care facility. The administrative payee is responsible for using the beneficiary's benefits in his best interest. Flat rate reimbursement shall not be charged to personal funds. The flat rate shall cover the services specified in Attachment 4.19-D, Section 400 of the State Plan.

(2) This rule is authorized by Section 26-1-5 and 42 CFR 442 and 447.

R414-15-2. Definitions.

The definitions in R414-1 apply to this rule.

R414-15-3. Facility Responsibilities.

(1) For residents who are Medicaid clients, the administration and management of a long term care facility (the facility) must provide the resident, next of kin, or legal guardian:

(a) a written statement at the time of admission explaining:

(i) the resident's rights regarding personal funds; and

(ii) a list of services included in the basic per diem rate;

(b) access to a written record of all financial transactions involving the individual resident funds;

(c) a written itemized statement quarterly of all financial transactions involving the individual resident funds upon written request; and

(d) all funds that were given to the facility for safekeeping, including interest, within 30 days of the resident's discharge.

(2) The facility must notify the Social Security Administration office to have a representative payee appointed for residents who do not have a legal guardian, representative payee, or other authorized individual to manage their personal needs funds.

(3) The facility must serve as a temporary representative payee for the resident until the representative payee is appointed.

(4) The facility must allow the resident to access his funds for at least one hour during business hours.

(5) Upon request, the facility must return funds to the resident from an outside interest-bearing account within one business day.

(6) The facility shall deposit all funds in excess of $50.00:

(a) within 15 calendar days of receipt of the money;

(b) in an interest-bearing account that clearly indicates that the facility's interest is only fiduciary; and

(c) in a federally insured savings institution.

(7) The facility may deposit the resident's Social Security check into the facility's bank account if the personal need portion of the resident's check is transferred to the resident's account on the same day.

(8) The facility must distribute monthly the interest from the resident's interest-bearing accounts by either:

(a) maintaining separate savings accounts for each resident; or

(b) prorating the amount individually if funds are combined in one account for all residents.

(9) The facility may keep up to $50.00 of the resident's money in a non-interest-bearing account that is readily accessible to the resident.

(10) The facility must give any benefits to the resident either personally or through the resident's personal need fund unless there is a written authorization from the resident or legal guardian to do otherwise. This includes resident entitlements from Social Security Supplemental Income, government and private pensions, Veterans Administration, and other similar entitlement programs.

(11) The facility must provide the estate executor or administrator of a deceased resident with a written accounting of the resident's personal funds within 30 days of the resident's death. If the resident has not had an executor or administrator appointed, the facility must provide the accounting to:

(a) the resident's next of kin, legal guardian, representative payee, or other person the resident designated to manage his personal financial affairs while he was living; and

(b) the District Court in the county where the resident died.

(12) If the facility sells or leases the business, it must:

(a) provide the buyer or lessee with a written statement of all of the residents' monies and properties being transferred;

(b) obtain a signed receipt from the new owner or lessee before the sale or lease is final; and

(c) provide each resident's legal guardian, representative payee, or other person the resident authorized to manage his personal funds, a written accounting of all funds held by the facility before any transfer of ownership. The new owner or lessee shall assume full liability for all residents' personal needs accounts.

(13) For medical or supplemental security income recipients, the facility must provide written notification to the resident and the Department ten days before the resident's funds are about to exceed the amount that would jeopardize his Medicaid eligibility.

(14) The facility must maintain the resident's personal funds for safekeeping if requested according to R414-15-4.

R414-15-4. Resident Personal Funds for Safekeeping.

The resident shall not be required to give his personal funds to the facility for safekeeping. If the resident (or legal guardian) requests this service of the facility, the request must be a written authorization.

KEY: medicaid
January 13, 1998 26-1-5
Notice of Continuation June 28, 2017

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia.
R414-49-1. Introduction.

The Medicaid Dental Program provides a scope of dental services for Medicaid recipients in accordance with the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

R414-49-2. Dental Services for the Blind or Disabled.

(1) Introduction and Authority.

(a) This section defines the scope of dental services available to blind or disabled Medicaid members who are 18 years of age or older.

(b) Dental services are authorized by 42 CFR 440.100, 440.120, and 483.460. This rule is also authorized under Sections 26-1-5 and 26-18-3.

(2) Definitions.

(a) "Dental services" whether furnished in the office, a hospital, a skilled nursing facility, or elsewhere, means covered services performed within the scope of the Medicaid dental provider's license as defined in Title 58, Occupations and Professions.

(b) "Blind or disabled" is as defined in Subsection 1614(a) of the Social Security Act.

(3) Client Eligibility Requirements.

(a) Dental Services are available to blind or disabled members who are 18 years of age or older.

(4) Program Access Requirements.

(a) Dental services are available only from a dental provider who has a current Utah Medicaid provider agreement, and has complied with all relevant laws and policy.

(5) Covered Services.

(a) Covered Services and limitations are maintained in the Utah Medicaid Coverage and Reimbursement Code Lookup and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual.

KEY: Medicaid
July 1, 2017 **26-1-5**
Notice of Continuation June 17, 2014 **26-18-3**

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 nationally recognized drug pricing index under contract with the Department.

(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 90-day 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.

(12) Medicaid may only cover hemophilia clotting factor when it is dispensed by a single-contracted provider in accordance with the Utah Medicaid State Plan.

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 Wholesale Acquisition Cost;

(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.

(g) Pharmacies that participate in the Federal Supply Schedule and use medications obtained through the schedule to bill Utah Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or All Inclusive Rate.

(h) Pharmacies that obtain and use medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.

(3) Dispensing fees are as follows:

(a) $9.99 for urban pharmacies in Utah;

(b) $10.15 for rural pharmacies in Utah;

(c) $7.66 for pharmacies located in a state other than Utah;

(d) $716.54 for hemophilia clotting factor dispensed by the contracted provider.

(e) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(f) Medicaid will only pay one dispensing fee per 24 days per covered outpatient drug per pharmacy.

(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. 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 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 Wholesale Acquisition Cost with no dispensing fee or the billed charges.

(8) In accordance with the Utah Medicaid State Plan, the Department may only reimburse a single-contracted provider for the purchase of hemophilia clotting factor.

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 covered-outpatient drug that would otherwise qualify for coverage.

(2) Compounded sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient 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.

KEY: Medicaid
June 14, 2017 26-18-3
Notice of Continuation April 28, 2017 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60A. Drug Utilization Review Board.
R414-60A-1. Introduction and Authority.

(1) The Drug Utilization Review (DUR) Board aids in pharmacy policy oversight and drug utilization.

(2) The DUR Board is authorized under 42 CFR 456.716 and Sections 26-18-2, 3, and 102.

R414-60A-2. DUR Board Composition and Membership Requirements.

(1) The Director of the Division of Medicaid and Health Financing (DMHF) shall act on behalf of the Executive Director of the Utah Department of Health regarding all DUR Board issues, and shall appoint the following groups of individuals to four-year terms on the DUR Board:

(a) Four physicians from recommendations received from the Utah Medical Association.

(b) One physician engaged in Academic Medicine.

(c) Three pharmacists from recommendations received from the Utah Pharmacy Association.

(d) One pharmacist engaged in Academic Pharmacy.

(e) One dentist from recommendations received from the Utah Dental Association.

(f) One individual from recommendations received from the Pharmaceutical Manufacturers Association (PhRMA).

(g) One consumer representative.

(h) One pharmacist from recommendations received from the Accountable Care Organizations (ACOs).

(2) Membership Requirements.

(a) An appointee may not serve more than two consecutive terms in one of the 12 board positions listed in Subsection R414-60A-2(1). Terms separated by more than an interruption of two months are not consecutive.

(b) If DMHF does not receive recommendations to fill a vacant position within 30 days of a request, DMHF may appoint a qualified individual to fill the vacancy.

(c) If there are no willing nominees for appointment when an appointed term has expired, the DMHF Director may reappoint members on the board to additional non-consecutive terms as needed.

(3) Notwithstanding the requirements in Subsection R414-60A-2(1), the Director shall adjust the length of terms upon appointment so that one-half of the DUR Board is appointed every two years.

(4) The DUR Board shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the board.

(5) When a vacancy occurs on the board, the Director shall appoint a replacement for the unexpired term of the vacating member.

(6) The DUR Board shall be managed by a non-voting board manager appointed from the pharmacy group within DMHF.

(7) Other individuals of the DMHF pharmacy group are non-voting ex-officio advisory members of the DUR Board.

R414-60A-3. Responsibilities and Functions.

(1) The DUR Board shall meet monthly in a public forum, except when meeting in executive session or in petitions subcommittee.

(2) The board may elect to not meet in a given month if circumstances do not require a meeting. The board shall meet at least ten times per year.

(3) The DUR Board chairperson shall conduct all meetings. The DUR Board manager shall conduct meetings if the chairperson is not present.

(4) In accordance with Section 26-18-105, notice shall be given for a DUR Board meeting in which prior authorization criteria is considered.

(5) The DUR Board manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record DUR Board business, notify DHCF when vacancies occur, provide meeting notices, and coordinate functions between the DUR Board and DHCF.

(6) DHCF shall rely upon the DUR Board to carry out the Division's federal and state responsibilities for the Medicaid drug program to address the following issues:

(a) Adverse reactions to drugs.

(b) Therapeutic appropriateness.

(c) Overutilization and underutilization.

(d) Appropriate use of generic drugs.

(e) Therapeutic duplication.

(f) Drug-disease contraindications.

(g) Drug-drug interactions.

(h) Incorrect drug dosage and duration of treatment.

(i) Drug allergy interactions.

(j) Clinical abuse and misuse.

(k) Identification and reduction of the frequency of patterns of fraud, abuse, and gross overuse.

(l) Inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(m) Prior Authorization criteria.

(7) The DUR Board may consider recommendations, criteria, and standards produced by the Pharmacy and Therapeutics (P and T) Committee.

KEY: Medicaid
April 1, 2017 **26-18-3**
Notice of Continuation June 13, 2017 **26-1-5**
26-18 Part 2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60B. Preferred Drug List.
R414-60B-1. Introduction and Authority.

(1) The Division of Health Care Financing (DHCF) has established a Preferred Drug List (PDL) to operate within the pharmacy program and at the Division's discretion.

(2) The Preferred Drug List is authorized under Section 26-18-2.4.

R414-60B-2. Client Eligibility Requirements.

A PDL is available to categorically and medically needy individuals.

R414-60B-3. Program Access Requirements.

A PDL is established for certain therapeutic classes of drugs and is available through the point of sale system of any Medicaid provider. At its discretion, DHCF establishes and implements the scope and therapeutic classes of drugs.

R414-60B-4. Service Coverage.

(1) Upon the recommendation of the Pharmacy and Therapeutics (P&T) Committee, DHCF pharmacy staff select the therapeutic classes and select the most clinically effective and cost effective drug or drugs within each class.

(2) The prescriber must obtain prior authorization from the Department to dispense drugs designated as "non-preferred" in each class, through the Department's current prior authorization system. Criteria for a Non-preferred Prior Authorization (NPA) is established by the Department in consultation with the Pharmacy and Therapeutics Committee.

(3) A prior authorization is not placed on any preferred drugs under Section R414-60B-4. Nevertheless, a prior authorization may apply if set by the Drug Utilization Review Board.

(4) For NPA requests submitted during normal business hours, Monday through Friday, 8 a.m. to 5 p.m., the prior authorization system shall provide either telephone or fax approval or denial within 24 hours of the receipt of the request.

(5) In an emergency situation for a prior authorization needed outside of normal business hours, a 72-hour supply of a non-preferred drug may be dispensed and the Department shall issue an NPA for the 72-hour supply on the next business day. Further quantity requests shall be subject to all NPA requirements.

R414-60B-5. P&T Committee Composition and Membership Requirements.

(1) There is created a Pharmacy and Therapeutics Committee within DHCF. The DHCF Director shall appoint the members of the P&T Committee for a two-year term. DHCF has the option of making the appointments renewable.

(2) DHCF staff request nominations for appointees from professional organizations within the state. These nominations are then given to the Director for selection and appointment.

(a) If there are no recommendations within 30 days of a request, DHCF may submit a list of potential candidates to professional organizations for consideration.

(b) If there are no willing nominees for appointment from professional organizations, the Director may seek recommendations from DHCF staff.

(3) The P&T Committee consists of one physician from each of the following specialty areas:

(a) Internal Medicine;
(b) Family Practice Medicine;
(c) Psychiatry; and
(d) Pediatrics.

(4) The PadT Committee consists of one pharmacist from each of the following areas:

(a) Pharmacist in Academia;
(b) Independent Pharmacy;
(c) Chain Pharmacy; and
(d) Hospital Pharmacy.

(5) DHCF shall appoint one voting committee manager.

(6) Up to two non-voting ad hoc specialists participate on the committee at the committee's invitation.

(7) An individual considered for nomination must demonstrate no direct connection to and must be independent of the pharmaceutical manufacturing industry.

(8) The P&T Committee shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the committee.

(9) When a vacancy occurs on the committee, the Director shall appoint a replacement for the unexpired term of the vacating member.

R414-60B-6. P&T Committee Responsibilities and Functions.

(1) The P&T Committee functions as a professional and technical advisory board to DHCF in the formulation of a PDL.

(2) P&T Committee recommendations must:

(a) represent the majority vote at meetings in which a majority of voting members are present; and

(b) include votes by at least one committee member from the group identified in Subsection R414-60B-5(3) and one member from the group identified in Subsection R414-60B-5(4)

(3) The P&T Committee manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record committee business, notify the Director when vacancies occur, provide meeting notices, and coordinate functions between the committee and DHCF.

(4) Notice for a P&T Committee meeting shall be given in accordance with applicable law.

(5) The P&T Committee chairperson shall conduct all meetings. The P&T Committee manager shall conduct meetings if the chairperson is not present.

(6) P&T Committee meetings shall occur at least quarterly.

(7) P&T Committee meetings shall be open to the public except when meeting in executive session.

(8) The committee shall:

(a) review drug classes and make recommendations to DHCF for PDL implementation;

(b) review new drugs, new drug classes or both, to make recommendations to DHCF for PDL implementation;

(c) review drugs or drug classes as DHCF assigns or requests;

(d) review drugs within a therapeutic class and make a recommendation to DHCF for the preferred drug or drugs within the therapeutic class; and

(e) review evidence based criteria and drug information.

R414-60B-7. Clinical and Cost-Related Factors.

The P&T Committee shall base its determinations on the following clinical and cost-related factors as established by the Drug Utilization Review Board:

(1) If clinical and therapeutic considerations are substantially equal, then the P&T Committee shall recommend to DHCF that it consider only cost.

(2) If cost information available to the P&T Committee indicates that costs are substantially the same, then the P&T Committee makes its recommendation to DHCF based on the clinical and therapeutic profiles of the drugs.

(3) In making its recommendations to DHCF, the P&T Committee may also consider whether the clinical, therapeutic effects, and medical necessity requirements justify the cost differential between drugs within a therapeutic class.

KEY: Medicaid

July 22, 2009 **26-18-2.4**
Notice of Continuation June 14, 2017 **26-18-3**
26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-70. Medical Supplies, Durable Medical Equipment, and Prosthetic Devices.
R414-70-1. Introduction and Authority.

(1) This rule governs the provision of medical supplies, durable medical equipment (DME), and prosthetic device services.

(2) This rule is authorized by Sections 26-18-3 and 26-1-5.

(3) As required by Section 26-18-2.3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-70-2. Definitions.

As used in this rule:

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

(a) can withstand repeated use;

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

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

(2) "Entitled to nursing facility services" means an individual who:

(a) is in a nursing facility and whose nursing facility stay is covered by Medicaid; or

(b) is receiving services in a waiver program for individuals who require nursing facility level of care.

(3) "Individual eligible for optional services" means an individual who is not entitled to nursing facility services.

(4) "Individual entitled to mandatory services" means an individual who is entitled to nursing facility services.

(5) "Medical supplies" means items for medical use that are disposable or semi-disposable and are non-reusable.

(6) "Medical Supplies and Durable Medical Equipment Manual" means services described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies and Durable Medical Equipment, as incorporated in Section R414-1-5.

(7) "Prosthetic device" means replacement, corrective, or supportive devices such as braces, orthoses, or prosthetic limbs prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

(a) artificially replace a missing portion of the body;

(b) prevent or correct physical deformities or malfunction; or

(c) support a weak or deformed portion of the body.

R414-70-3. Services.

(1) Medical supplies, DME, and prosthetic devices are optional services.

(2) Medical supplies, DME, and prosthetic devices are limited to services described in the Medical Supplies and Durable Medical Equipment Manual.

(3) The Medical Supplies and Durable Medical Equipment Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Medical supplies, DME, and prosthetic devices may be provided to an individual only as part of a written plan that is reviewed at least annually by a physician.

(5) The home health agency must meet the face-to-face requirement, as stated in Section R414-1-30, or the Department may deny or recover reimbursement.

R414-70-4. Services for Individuals Eligible for Optional Services.

(1) An individual eligible for optional services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies and Durable Medical Equipment Manual.

(2) An individual eligible for optional services must meet the criteria established in the Medical Supplies and Durable Medical Equipment Manual and obtain prior approval if required.

R414-70-5. Services for Individuals Eligible for Mandatory Services.

(1) An individual entitled to mandatory services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies and Durable Medical Equipment Manual.

(2) An individual eligible for mandatory services must meet the criteria established in the Medical Supplies and Durable Medical Equipment Manual and obtain prior approval if required.

(3) An individual entitled to mandatory services may request an agency review to seek medical supplies and DME not listed in the Medical Supplies and Durable Medical Equipment Manual.

R414-70-6. Services for Individuals Residing in Long Term Care Facilities.

(1) The Department provides medical supplies, DME, and prosthetic devices to individuals residing in a nursing care facility or an ICF/MR as part of the per diem payment.

(2) An individual residing in a nursing care facility or ICF/MR may receive additional medical supplies, DME, and prosthetic devices only as specifically indicated in the Medical Supplies and Durable Medical Equipment Manual.

(3) An individual residing in a nursing care facility or an ICF/MR may request an agency review to seek medical supplies and DME not listed in the Medical Supplies and Durable Medical Equipment Manual.

R414-70-7. Less Costly Alternative.

The Department may provide at its discretion services not described in the Medical Supplies and Durable Medical Equipment Manual as provided in Section R414-1-6.

R414-70-8. Reimbursement.

Medical supplies, DME, and prosthetic devices are reimbursed using the fee schedule in Attachment 4.19-B of the Medicaid State Plan and incorporated by reference in Section R414-1-5.

KEY: Medicaid, medical supplies, durable medical equipment, prosthetics
July 1, 2017 **26-1-5**
Notice of Continuation September 27, 2012 **26-18-2.3**
26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Sections 26-1-5 and 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-303-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the Department adopts and incorporates by reference the following definitions as found in 42 CFR 435.4, October 1, 2012 ed.:

(a) "Caretaker relative;"

(b) "Family size;"

(c) "Modified Adjusted Gross Income (MAGI);"

(d) "Pregnant woman."

(2) A dependent child who is deprived of support is defined in Section R414-302-5.

(3) The definition of caretaker relative includes individuals of prior generations as designated by the prefix great, or great-great, etc., and children of first cousins.

(a) To qualify for coverage as a non-parent caretaker relative, the non-parent caretaker relative must assume primary responsibility for the dependent child and the child must live with the non-parent caretaker relative or be temporarily absent.

(b) The spouse of the caretaker relative may also qualify for Medicaid coverage.

R414-303-3. Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, October 1, 2012 ed., which are adopted and incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2013, which are adopted and incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2013, which is adopted and incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts and incorporates by reference the disability determination requirements described in 42 CFR 435.541, October 1, 2012 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, April 1, 2012 ed., to decide if an individual is disabled. The Department notifies the eligibility agency of its disability decision, which then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual who is denied disability status by the State Medicaid Disability Office requests a fair hearing, the individual may request a reconsideration as part of the fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-7.

(a) The individual may provide the eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department may not delay the individual's fair hearing due to the reconsideration process.

(d) The State Medicaid Disability Office shall notify the individual and the Hearings Office of the reconsideration decision.

(i) If disability status is approved pursuant to the reconsideration, the eligibility agency shall complete the Medicaid eligibility determination for disability Medicaid. The individual may choose whether to pursue or abandon the fair hearing.

(ii) If disability status is denied pursuant to the reconsideration, the fair hearing process will proceed unless the individual chooses to abandon the fair hearing.

(5) If the eligibility agency denies an individual's Medicaid application because the State Medicaid Disability Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verification the eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2013, the

eligibility agency shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2013, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2013, for a given year, or as subsequently authorized by Congress under the American Taxpayer Relief Act, Pub. L. No. 112 240, signed into law on January 2, 2013. The eligibility agency shall deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the eligibility agency shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The eligibility agency shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women, Children, and Individuals Infected with Tuberculosis Using MAGI Methodology.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, and 42 U.S.C. 1396a(a)(10)(A)(ii)(XII). The Department uses the MAGI methodology defined in Section R414-304-5 to determine household composition and countable income for these individuals.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives as required in 42 CFR 435.110, whose countable income is equal to or below 55% of the Federal Poverty Level (FPL).

(4) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the FPL.

(5) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.

(6) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116.

(a) The Department elects the income limit of 139% of the FPL to determine a pregnant woman's eligibility for Medicaid.

(b) An individual, as defined in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

(7) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

(8) The Department provides Medicaid coverage to an individual who is infected with tuberculosis and who does not qualify for a mandatory Medicaid coverage group. The individual's income cannot exceed the amount of earned income an individual, or if married, a couple, can have to qualify for Supplemental Security Income.

R414-303-5. Medicaid for Parents and Caretaker Relatives, Pregnant Women, and Children Under Non-MAGI-Based Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.117, 435.139, 435.170 and 435.301 through 435.310, October 1, 2012 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7) in effect January 1, 2013, which are adopted and incorporated by reference.

(2) To qualify for coverage as a medically needy parent or other caretaker relative, the parent or caretaker relative must have a dependent child living with the parent or other caretaker relative.

(a) The parent or other caretaker relative must be determined ineligible for the MAGI-based Parent and Caretaker Relative coverage group.

(b) The parent or other caretaker relative must not have resources in excess of the medically needy resource limit defined in Section R414-305-5.

(3) The income and resources of the non-parent caretaker relative are not counted to determine medically needy eligibility for the dependent child.

(4) To qualify for Child Medically Needy coverage, the dependent child does not have to be deprived of support and does not have to live with a parent or other caretaker relative.

(5) If a child receiving SSI elects to receive Medically-Needy Child Medicaid, the child's SSI income shall be counted with other household income.

(6) The eligibility agency shall determine the countable income of the non-parent caretaker relative and spouse in accordance with Section R414-304-6 and Section R414-304-8.

(a) Countable earned and unearned income of the non-parent caretaker relative and spouse is divided by the number of family members living in the household.

(b) The eligibility agency counts the income attributed to the caretaker relative, and the spouse if the spouse is included in the coverage, to determine eligibility.

(c) The eligibility agency does not count other family members in the non-parent caretaker relative's household to determine the applicable income limit.

(d) The household size includes the caretaker relative and the spouse if the spouse also wants medical coverage.

(7) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(8) An individual who is pregnant, and under 19 years of age as described in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

R414-303-6. 12-Month Transitional Medicaid.

The Department shall provide 12 months of extended medical assistance as set forth in 42 U.S.C. 1396r-6, when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility as described in Subsection 1931(c)(2) of the Social Security Act.

(1) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive 12-month Transitional Medicaid.

(2) Children who live with the parent are eligible to receive Transitional Medicaid.

R414-303-7. Four-Month Transitional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.112 and 435.115(f), (g) and (h), October 1, 2012 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) and Section 1931(c)(2) in effect January 1, 2013, to provide four months of extended medical assistance to a household when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility for the reasons defined in 42 CFR 435.112 and 435.115.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive Four-Month Transitional Medicaid for the reasons defined in 42 CFR 435.112 and 435.115.

(b) Children who live with the parent are eligible to receive Four-Month Transitional Medicaid.

(2) Changes in household composition do not affect eligibility for the four-month extension period. Newborn babies are considered household members even if they are not born the month the household became ineligible for Medicaid. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-8. Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(2), October 1, 2015 ed. The Department also adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(IX) and Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act, effective January 1, 2016.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are under the responsibility of any state and meet the criteria of Subsection 1902(a)(10)(A)(i)(IX) of the Social Security Act. Former Foster Care Youth is the name of this coverage group.

(a) Coverage is available through the month in which the individual turns 26 years of age.

(b) There is no income or asset test for eligibility under this group.

(4) The Department elects to cover individuals who are in foster care under the responsibility of the State at the time the individual turns 18 years of age, are not eligible under the Former Foster Care Youth coverage group, and who are 18 years old but not yet 21 years old as described in Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is under the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services is the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) When funds are available, an eligible independent foster care adolescent may receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-9. Subsidized Adoptions and Kinship Guardianship.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(1), October 1, 2013 ed, in regard to Subsidized Adoption Medicaid.

(2) The Department elects to cover individuals under a state adoption agreement as defined in 42 CFR 435.227, October 1, 2013 ed., which is adopted and incorporated by reference.

(3) The Department may not impose resource or income tests for a child eligible under a state subsidized adoption agreement.

(4) The Department adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(I) of the Social Security Act, effective January 1, 2014, in regard to Kinship Guardianship Medicaid.

(5) The Department of Human Services determines eligibility for subsidized adoption and Kinship Guardianship Medicaid.

R414-303-10. Refugee Medicaid.

(1) The Department adopts and incorporates by reference 45 CFR 400.90 through 400.107 and 45 CFR, Part 401, October 1, 2012 ed., relating to refugee medical assistance.

(2) Child support enforcement rules do not apply.

(3) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(4) Cash assistance payments received by a refugee from a resettlement agency are not counted.

(5) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Presumptive Eligibility for Medicaid.

(1) The Department adopts and incorporates by reference, the definitions found at 42 CFR 435.1101, and the provisions found at 42 CFR 435.1103, and 42 CFR 435.1110, October 1, 2013 ed., in relation to determinations of presumptive eligibility.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider whom the Department determines is qualified to make a determination of presumptive eligibility for a pregnant woman and who meets the criteria defined in Section 1920(b)(2) of the Social Security Act. Covered provider also means a hospital that elects to be a qualified entity under a memorandum of agreement with the Department;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of

continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) A child determined presumptively eligible who is under 19 years of age may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the child turns 19, whichever occurs first.

(7) An individual determined presumptively eligible for former foster care children coverage may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the individual turns 26 years old, whichever occurs first.

(8) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups defined in Section 1920 (pregnant women, former foster care children, parents or caretaker relatives), Section 1920A (children under 19 years of age) and 1920 B (breast and cervical cancer patients but only Centers for Disease Control provider hospitals can do presumptive eligibility for this group) of the Social Security Act, January 1, 2013.

(9) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(10) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(11) The covered provider may not count as income the following:

(a) Veteran's Administration (VA) payments;

(b) Child support payments; or

(c) Educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(12) An individual found presumptively eligible for one of the following coverage groups may only receive one presumptive eligibility period in a calendar year:

(a) Parents or caretaker relatives;

(b) Children under 19 years of age;

(c) Former foster care children; and

(d) Individuals with breast or cervical cancer.

R414-303-12. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2013, which the Department adopts and incorporates by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) The Department provides Medicaid eligibility for services under this program to individuals who are screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) An individual who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the individual has insurance coverage but is subject to a pre-existing condition period that prevents the receipt of treatment for breast or cervical cancer or precancerous condition, the individual is considered to not have other health insurance coverage until the pre-existing condition period ends at which time eligibility for the program ends.

(4) An individual who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) An individual must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for an individual with breast or cervical cancer under Section 1902(a)(10)(A)(ii)(XVIII) ends when treatment is no longer needed for the breast or cervical cancer. At each eligibility review, eligibility workers determine whether treatment is still needed based on the doctor's statement or report.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility
July 1, 2017 26-18-3
Notice of Continuation January 23, 2013 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
R414-401-1. Introduction and Authority.

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is $20.98 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of $8.36 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-4. Reporting and Auditing Requirements.

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

(7) Providers may update previously submitted patient day assessment reports for 90 days following the original submission date.

R414-401-5. Penalties and Interest.

(1) The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment are provided in Section 26-35a-105. The Department shall suspend all Medicaid payments to a nursing facility until the facility pays the assessment due in full or until the facility and the Department reach a negotiated settlement.

(2) The Department shall charge a nursing facility a negligence penalty as prescribed in Subsection 26-35a-105(3)(a) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment.

(3) The Department shall charge a nursing facility an intentional disregard penalty as prescribed in Subsection 26-35-105(3)(b) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment two times within a 12-month period, or if the facility does not pay in full (or file its report) within 60 days of a notice of deficiency of the assessment.

(4) The Department shall charge a nursing facility an intent to evade penalty as prescribed in Subsection 26-35a-105(4) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment three times with a 12-month period, or if the facility does not pay in full (or file its report) within 75 days of a notice of deficiency of the assessment.

KEY: Medicaid, nursing facility
July 1, 2017 **26-1-30**
Notice of Continuation April 7, 2014 **26-35a**
26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-514. Requirements for Moratorium Exception.
R414-514-1. Introduction and Authority.

(1) This rule implements requirements that a Medicaid-certified nursing facility program must meet for certification of additional nursing care facility programs, or for certification of additional beds within an existing nursing care facility program.

(2) This rule is authorized under Sections 26-18-3, 26-18-5, and 26-18-503.

R414-514-2. Requirements for Additional Nursing Care Facility Programs or Additional Beds Within an Existing Program.

(1) A Medicaid-certified nursing care facility program must meet the requirements of Rule R414-27 to acquire additional nursing care facility programs, and must meet the requirements of Subsection 26-18-503(5) to acquire additional beds.

(2) Pursuant to Subsection 26-18-503(5), a nursing care facility program must provide all necessary information on the Utah Medicaid Nursing Facility Moratorium Exception Application. The Division of Medicaid and Health Financing (DMHF) shall return the application to the requestor if the application or supporting documentation is deficient.

(3) The notice date shall be the postmark date or other proof of delivery for the application mailed to DMHF.

(4) If DMHF receives an application for the Utah Medicaid Nursing Facility Moratorium Exception in a rural county, and a Medicaid-certified nursing facility program does not meet the quality standards pursuant to Subsection 26-18-503(5)(d)(v), the certified program may provide additional information under Subsection 26-18-503(9)(a)(ii). Any additional information submitted to DMHF must be postmarked or have other proof of delivery information within 14 days of the original notice from DMHF. Electronic mail (email) does not meet the notification requirement.

KEY: Medicaid
July 1, 2017 **26-18-3**
26-18-503

R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, including:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a

centralized and automated computer system administered by the Department of Human Resource Management.

(36) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(37) Disciplinary Action: Action taken by management under Rule R477-11.

(38) Dismissal: A separation from state employment for cause under Section R477-11-2.

(39) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(40) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(41) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(42) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(43) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(44) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(45) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(46) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(47) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(48) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) GOMB: Governor's Office of Management and Budget.

(51) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(52) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(53) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(54) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(55) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(56) HRE: Human Resource Enterprise; the state human resource management information system.

(57) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(58) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(59) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(60) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(61) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(62) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(63) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(64) Job Requirements: Skill requirements defined at the job level.

(65) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(66) Leave Benefit: A benefit provided to an employee that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employees.

(67) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(68) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(69) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(70) Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(71) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(72) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(73) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(74) Nonfeasance: Failure to perform either an official duty or legal requirement.

(75) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(76) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.

(77) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(78) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(79) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(80) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(81) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(82) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(83) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

(84) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(85) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(86) Position Identification Number: A unique number assigned to a position for FTE management.

(87) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(88) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(89) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(90) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(91) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(92) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(93) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(94) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(95) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(96) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(97) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(98) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(99) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(100) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(101) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(102) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(103) Salary Range: Established minimum and maximum rates assigned to a job.

(104) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(105) Separation: An employee's voluntary or involuntary departure from state employment.

(106) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(107) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The salary range adjustment cannot have a budgetary impact on an agency unless additional approval is received from the Governor's Office.

(108) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(109) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(110) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(111) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(112) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(113) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(114) Veteran Employment Opportunity Program (VEOP): A program designed to appoint a qualified veteran through an on the job examination period.

(115) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(116) Wage: The fixed hourly rate paid to an employee.

(117) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions
July 1, 2017 67-19-6
Notice of Continuation April 27, 2017 67-19-15
67-19-18

R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to the executive branch of Utah State Government and its career service and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

(1) members of the Legislature and legislative employees;

(2) members of the judiciary and judicial employees;

(3) officers, faculty, and other employees of state institutions of higher education;

(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Board of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch and their Schedule A employees;

(7) employees of independent entities, quasi-governmental agencies and special service districts;

(8) employees in any position that is determined by statute to be exempt from these rules.

R477-2-2. Compliance Responsibility.

Agencies shall comply with these rules.

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:

(a) applying the rule prevents the achievement of legitimate government objectives; or

(b) applying the rule infringes on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

R477-2-3. Fair Employment Practice and Discrimination.

All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) file a charge with the Utah Labor Commission Antidiscrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

R477-2-4. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Management and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

R477-2-5. Records.

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files.

(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.

(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical and I-9 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) If disciplinary action under R477-11-1(4) has been sustained and completed and all time for appeal has been

exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act - 1986).

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

R477-2-8. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed under Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
July 1, 2017 **52-3-1**
Notice of Continuation April 27, 2017 **63G-2**
63G-5-201
63G-7
67-19-6
67-19-15
67-19-18

R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-1. Authorized Recruitment System.

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee is hired to work part time indefinitely and shall work less than 30 hours per week; or

(b) be Schedule TL, in which the employee is hired to work on a time limited basis;

(c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.

(d) if the required work hours of the position meet or exceed 30 hours per week for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under Subsection R477-4-8.

(6) Agency management shall ensure that all new hire appointees in Schedules AB, AC, AD, AR and AS submit disclosure statements to DHRM.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM business practices;

(b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitments shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(c) A transfer may not include an increase but may include a decrease in actual wage.

(d) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(e) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and may not be eligible for a longevity increase. Employees shall be eligible for a longevity increase only after they have been above the salary range maximum for 12 months and all other longevity criteria are met.

(f) An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

(2) A reassignment or transfer may include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit.

R477-4-6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(2) Employees rehired under the Phased Retirement Program pursuant to Utah Code Section 49-11-13 shall be:

(a) Classified as time-limited (Schedule TL) for the duration of a phased retirement employment period; and

(b) Placed at or below the employee's wage at the time of

retirement. Employees cannot be placed below the minimum of the established salary range of the job.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall include the following:

(a) a detailed position record (DPR) based upon a current job or position analysis;

(b) an initial, impartial screening of the individual's qualifications;

(c) impartial evaluation and results; and

(d) reasonable accommodation for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

R477-4-8. Hiring Lists.

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using a DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-12. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

R477-4-13. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-6(10).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-14. Assimilation.

(1) An employee assimilated by the state from another government career service system to fill a Schedule B position shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process prescribed in DHRM Rules.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

(b) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

R477-4-15. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices

July 1, 2017 67-19-6

Notice of Continuation April 27, 2017 67-20-8

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

(1) Only an employee who is hired through a pre-approved process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period prior to receiving career service status.

(3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range to the previous career service position held, when:

(a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status;

(b) the employee was hired from a hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by Subsection R477-4-8; or

(c) the employee was hired through the Alternative State Application Program (ASAP) or Veterans Employment Opportunity Program (VEOP) and successfully completed a six month on the job examination period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive an opportunity to demonstrate competence in a career service position. A performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career service position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, military leave under USERRA, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period including when changing agencies unless there is a break in service.

(3) An employee in a career service position who works at least 50% of the regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a career service position may be transferred, reassigned or promoted to another career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. The probationary period shall be the full probationary period defined in the job description of the new position.

R477-5-3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees
July 1, 2017 67-19-6
Notice of Continuation April 27, 2017 67-19-16(5)(b)

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.

(a) Each job description shall include a salary range.

(b) Agency approved wage increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

(c) Agency approved wage decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

(d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

R477-6-2. Allocation to the Pay Plans for Classified Employees.

(1) Each job in classified service shall be:

(a) assigned to a salary range and job family.

(b) surveyed in the market in accordance with the benchmark job(s).

(c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;

(b) a structure adjustment that has no budgetary impact on all affected agencies; or

(c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

(i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.

(ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Salary ranges cannot be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments. GOMB approval is required for adjustments to the salary range of the Deputy Director or equivalent.

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments shall not be approved for cross agency jobs unless the adjustment has no budgetary impact on all affected agencies.

R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ and all employees of the State Board of Education.

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-5. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

R477-6-6. Salary.

(1) Promotions.

(a) An employee who is not in designated schedule IN or TL and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).

(b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity Salary Increase.

(a) An employee shall receive an initial longevity salary increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous.

(ii) the employee has been at or above the maximum of the current salary range for at least one year; and

(iii) received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity

increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:

(i) shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may be eligible for a longevity salary increase after meeting the requirements of (3)(a).

(h) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.

(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.

An employee's current actual wage may not be decreased except as provided in federal or state law.

(6) Transfer.

(a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.

(b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for administrative salary increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum may not be granted administrative salary increases.

(g) Increasing an employee's wage as part of a transfer or reassignment action must be justified as an administrative salary increase in a separate action.

(9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage may not be less than the salary range minimum.

(b) Wage decreases shall be at least 1/2% or down to the salary range minimum.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a wage increase or decrease of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

R477-6-7. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed $4,000 per pay period and $8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to $8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and

bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of $50 per occurrence and $200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

R477-6-8. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-10. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Hourly wage $24.03 or less shall receive $125,000 of term life insurance;

(ii) Hourly wage between $24.04 and $28.84 shall receive $150,000 of term life insurance;

(iii) Hourly wage $28.85 or higher shall receive $200,000 of term life insurance.

(2) An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-11. Severance Benefit.

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of separation a severance benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

R477-6-12. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: wages, employee benefit plans, insurance, personnel management

July 1, 2017 63F-1-106

Notice of Continuation April 27, 2017 67-19-6

67-19-12

67-19-12.5

67-19-15.1(4)

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) An employee shall be eligible for a leave benefit when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.

(5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.

(6) An employee may not use any type of leave except military and jury leave to accrue excess hours.

(7) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

(9) After four months cumulative leave in a 24 month period, the employee may be separated from employment regardless of paid leave status unless prohibited by state or federal law. Decisions to separate the employee shall be made by the agency head in consultation with DHRM.

(10) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Year's Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years --six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee, effective from the day the employee is appointed through the duration of the appointment under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions; or

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children, or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing

sick leave, a supervisor may require an employee to produce administratively acceptable evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee accepting a benefit eligible position within one year of forfeiting unused sick leave for accepting a non-benefit eligible position shall have their sick leave reinstated as Program III.

(d) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) An employee may use converted sick leave as annual leave or as regular sick leave.

(3) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(4) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(5) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employee's PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, including when a retirement eligible employee passes away, an employee or surviving spouse shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006 shall be Program II sick leave hours.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who is reemployed in a benefited position with the state shall have a benefit calculated on any Program II sick leave hours if:

(i) The employee chooses to suspend pension;

(ii) The employee was separated for one year or more;

(iii) The employee was reemployed before January 2, 2014; and

(iv) The employee must work for two years or more to receive this benefit.

(7) A retired employee who is reemployed in a benefited position with the state after January 4, 2014 shall accrue Program III sick leave, which shall have no benefit upon subsequent retirement.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. Witness and Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer.

(4) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

A benefited or non-benefited employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Section 39-3-2. Military leave for part-time employees shall be based on a prorated basis that is no more than the average hours worked in the last 12 months, or if employed less than 12 months, the average hours worked since date of hire.

(1) An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12 month period to participate in disaster relief services for a disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the disaster relief organization;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(2) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(3) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(4) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(5) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(6) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is allowed up to 12 workweeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 workweeks of family and medical leave during a 12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any

administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

(a) be employed by the state for at least 12 months;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.

(b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

(i) Program III sick leave;

(ii)(A) Compensatory time;

(B) Excess leave; or

(C) Annual leave;

(iii)(A) Converted sick leave;

(B) Program II sick leave; or

(C) Program I sick leave.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by a licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, the employee shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked pursuant to R477-7-17(2).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee may be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) Upon approval of an LTD claim:

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump

sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work prior to termination under this section, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(4) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-18. Disabled Law Enforcement Officer Amendments.

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Access to a leave bank is not an employee right and shall be authorized at management discretion.

(b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.

(c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-20. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations
July 1, 2017 **34-43-103**
Notice of Continuation April 27, 2017 **39-3-1**
63G-1-301
67-19-6
67-19-12.9
67-19-14

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Work Week.

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;

(c) not allow participating employees to violate overtime rules;

(d) not compensate for normal commute time; and

(e) document telecommuting authorization in the Utah Performance Management system.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.

(b) Appropriate temporary storage shall be provided for expressed milk.

R477-8-4. Overtime Standards.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or

(ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of

Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency;

(iii) changes FLSA status to nonexempt; or

(iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(e) Schedule AB employees may not be compensated for compensatory time except with time off.

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;

(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training; and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time; or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA nonexempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

R477-8-11. Stand-by Time.

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or

correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

R477-8-12. Commuting and Travel Time.

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

R477-8-14. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions.

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

(3) Time spent on a temporary transitional assignment may be counted as leave for purposes of 477-7-1(9).

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-21. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment
July 1, 2017 **67-19-6**
Notice of Continuation April 27, 2017 **67-19-6.7**
20A-3-103

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations. The Executive Director, DHRM, may authorize exceptions to the use of UPM and this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) Performance management systems shall satisfy the following criteria:

(a) Agency management shall select an overall performance rating scale.

(b) Performance standards and expectations for each employee shall be specifically written in a performance plan.

(c) Managers or supervisors shall notify employees when their performance plans are implemented or modified.

(d) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.

(2) Each fiscal year a state employee shall receive a performance evaluation.

(a) An employee shall have the right to include written comments pertaining to the employee's performance evaluation.

(b) A probationary employee may receive a performance evaluation at the end of the probationary period.

R477-10-2. Performance Improvement.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management may place an employee on an appropriate and documented performance improvement plan in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee and determine appropriate action.

(2) Performance improvement plans shall identify or provide for:

(a) a designated period of time for improvement;

(b) an opportunity for remediation;

(c) performance expectations;

(d) closer supervision to include regular feedback of the employee's progress;

(e) notice of disciplinary action for failure to improve; and,

(f) a written performance evaluation at the conclusion of the performance improvement plan.

(3) An employee shall have the right to submit written comment to accompany the performance improvement plan.

(4) Performance improvement plans may also identify or provide for the following based on the nature of the performance issue:

(a) training;

(b) reassignment;

(c) use of appropriate leave;

(5) Following successful completion of a performance improvement plan, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

R477-10-3. Written Warnings.

Agency management may use written warnings to address performance or conduct problems.

R477-10-4. Employee Development and Training.

(1) Agency management may establish programs for training and staff development that shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.

(5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-5. Education Assistance.

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee resigns from state employment within one year of completing educational work.

(i) Agencies may require the employee to repay any assistance received if the employee transfers to another agency within one year of completing educational work.

(d) Education assistance may not exceed $5,250 per employee in any one calendar year unless approved in advance by the agency head.

(e) The employee shall disclose all scholarships, subsidies and grant monies provided to the employee for the educational program.

(i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from sources in Subsection R477-10-4(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
July 1, 2017 67-19-6
Notice of Continuation April 27, 2017

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, or nonfeasance;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position;

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee.

(3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline, the reasons supporting the intended action, and the right to reply within five working days.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five working days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee, in accordance with Section R477-11-2, through one of the following actions:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage; or

(ii) An employee's current actual wage is lowered within the current salary range, as determined by the agency head or designee.

(d) dismissal in accordance with Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Imposed disciplinary actions are subject to the grievance and appeals procedure by law for career service employees, except under Section 67-19a-402.5. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee for any or for no reason without right of appeal, except under Sections 67-21-3.5 and 67-19a-402.5.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee shall reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. This meeting shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. The reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and

standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
July 1, 2017 **67-19-6**
Notice of Continuation April 27, 2017 **67-19-18**
63G-2-3

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

A career service employee may resign or retire by giving written or verbal notice to the supervisor or an appropriate representative of agency management.

(1) After giving a notice, withdrawal of a resignation or retirement may occur only with the consent of agency management.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned the position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) Management shall send the employee notice of intent to separate to the employee's last known address.

(b) The employee shall have the right to appeal separation to the agency head within five working of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address.

(c) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

(a) the categories of work to be eliminated, including positions impacted through bumping;

(b) a decision by agency management allowing or disallowing bumping;

(c) specifications of measures taken to facilitate the placement of affected employees through reassignment, transfer and relocation to vacant positions for which the employee qualifies;

(d) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

(e) When more than one employee is affected, employees shall be listed in order of retention points.

(f) Retention points do not have to be calculated for a single incumbent WFAP.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service tenure with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

(a) temporary employees in schedule IN or TL positions;

(b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is separated due to a RIF shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) An employee notified of separation due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration to the application score in the process of developing the hiring list as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-6.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) Prior to separation and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-5.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement
July 1, 2017 67-19-6
Notice of Continuation April 27, 2017 67-19-18

R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Final applicants, who are not current employees, may be subject to preemployment drug testing at agency discretion, except as required by law.

(7) Employees are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;
(b) critical incident;
(c) post accident;
(d) return to duty; and
(e) follow up.

(8) Final candidates for transfer or promotion to a highly sensitive position are subject to preemployment drug testing at agency discretion, except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(9) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(10) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(11) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(12) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Policy and Procedures.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(14) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

(15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level; or

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00; or

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be provided the opportunity for a last chance agreement and be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-302.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(f) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary

action.

(7) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(8) An employee who is convicted for a violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Drug and Alcohol Test Records.

(1) A separate confidential file of drug and alcohol test results and documents related to the last chance agreements shall be maintained and stored in the agency human resource field office.

(2) Test results shall be retained in accordance with the retention schedule.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

July 1, 2017 **63G-2-3**

Notice of Continuation October 31, 2016 **67-19-6**

67-19-18

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R477. Human Resource Management, Administration.
R477-15. Workplace Harassment Prevention.
R477-15-1. Policy.

It is the policy of the State of Utah to provide a work environment free from discrimination and harassment based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity or class under state or federal law.

(1) Workplace harassment includes the following subtypes:

(a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) An employee may be subject to discipline for violating workplace policies, even if:

(a) the conduct occurs outside of scheduled work time or work location; or

(b) the the conduct is not sufficiently severe to constitute a violation of law.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

R477-15-2. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing, or is otherwise engaged in protected activity.

R477-15-3. Complaint Procedure.

Management shall permit employees who allege workplace harassment, retaliation, or both to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) Employees who feel they are being subjected to workplace harassment, retaliation, or both should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness(es), if applicable.

(2) An employee may file an oral or written complaint of workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

R477-15-4. Investigative Procedure.

(1) When warranted investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

R477-15-5. Workplace Harassment Records.

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

R477-15-6. Training.

(1) DHRM shall provide employees training, including additional training for supervisors, on the prevention of workplace harassment.

(a) The curriculum shall be approved by the Division of Risk Management.

(b) Agencies shall ensure employees complete workplace harassment prevention training upon hire and at least every two years thereafter.

(c) Training records shall be submitted to DHRM including who provided the training, who attended the training and when they attended it.

KEY: administrative procedures, hostile work environment
July 1, 2017 67-19-6
Notice of Continuation April 27, 2017 67-19-18
63G-2-305
E.O. No. 12 "Prohibiting Unlawful Harassment" (December 2006)

R477. Human Resource Management, Administration.
R477-16. Abusive Conduct Prevention.
R477-16-1. Policy.

It is the policy of the State of Utah to provide a work environment free from abusive conduct.

(1) Abusive conduct includes physical, verbal or nonverbal conduct, such as derogatory remarks, insults, or epithets made by an employee that a reasonable person would determine:

(a) was intended to cause intimidation, humiliation, or unwarranted distress;

(b) exploits a known physical or psychological disability; or

(c) results in substantial physical or psychological harm caused by intimidation, humiliation or unwarranted distress.

(2) A single act does not constitute abusive conduct unless it is especially severe and egregious.

(3) Abusive conduct does not include:

(a) appropriate disciplinary or administrative actions;

(b) coaching or work-related feedback;

(c) reasonable work assignments or job reassignments; or

(d) reasonable differences in styles of management, communication, expression or opinion.

(4) An employee may be subject to discipline under this rule even if the conduct occurs outside of scheduled work time or work location.

(5) Once a complaint of abusive conduct has been filed, the accused may not communicate with the complainant regarding allegations in the complaint.

R477-16-2. Complaint Procedure.

Management shall permit employees who allege abusive conduct to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation.

(1) Employees who feel they are being subjected to abusive conduct should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness(es), if applicable

(2) An employee shall file a written complaint of abusive conduct with their immediate supervisor, any other supervisor in their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with DHRM and document the action.

R477-16-3. Investigative Procedure.

(1) When warranted, investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If an investigation finds the allegations of abusive conduct to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in abusive conduct allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

(3) Participants in any abusive conduct investigation shall treat all information pertaining to the case as confidential.

R477-16-4. Abusive Conduct Training.

(1) DHRM shall provide employees and supervisors training on the prevention of abusive conduct.

(a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, and options available under rule.

(b) Agencies shall ensure employees complete training upon hire and at least every two years thereafter.

(c) Training records shall be submitted to DHRM including who provided the training, who attended the training and when they attended it.

KEY: abusive conduct, administrative procedures, hostile work environment
July 1, 2017 **67-19-6**
67-19-44

R510. Human Services, Aging and Adult Services.
R510-1. Authority and Purpose.
R510-1-1. Authority.

(1) These rules are promulgated in accordance with the following laws:

(a) Older Americans Act, Pub. L. No. 106-501, 42 USC Section 3001 et seq.

(b) Utah Division of Aging and Adult Services, Section 62A, Chapter 3, Parts 1, 2, and 3.

(c) Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.

(d) Social Services Block Grant, 45 CFR Parts 16, 74, and 96.

R510-1-2. Purpose.

The purpose of this rule is for clarification of statutory authority and definition problems.

KEY: law, Older Americans Act*
April 17, 2001 62A-3-101 through 62A-3-312
Notice of Continuation June 30, 2017 42 USC 3001

R510. Human Services, Aging and Adult Services.
R510-100. Funding Formulas.
R510-100-1. Older Americans Act.

(1) Compliance with State and Federal Law for Older Americans Act (OAA).

(a) The Division of Aging and Adult Services (Division) shall develop an intrastate funding formula for distribution of OAA, Title III: Grants for State and Community Programs on Aging funds and State general funds for social and nutrition services which complies with 45 CFR, Subchapter C, Part 1321.37 and with Section 62A-3-108.

(b) The formula shall be reviewed whenever a new State Plan on Aging is required to be submitted.

(2) Affected Funding Sources for OAA.

(a) The funding formula shall include:

(i) All federal funds received under Title III of the OAA with the exception of:

(A) Allowable State Division administrative funds, and

(B) Funds allocated to the State-delivered Long-Term Care Ombudsman Program.

(ii) All state funds appropriated for Title III social and nutrition services.

(b) The funding formula shall not include state or federal funds appropriated for:

(i) The Alternatives Program,

(ii) Adult Services under the Division, or

(iii) Funds identified under Section 62A-3-108(2).

(3) Funding Formula Factors for OAA.

(a) The funding formula shall incorporate the following factors:

(i) Base factor divided equally among the twelve Area Agencies on Aging (AAA) in existence on July 1, 1986;

(ii) Population factor comprised of each AAA's proportion of the State's weighted elderly population; and

(iii) Land area factor consisting of each AAA's proportion of the State's total adjusted square miles.

(b) Weighted elderly population shall consist of:

(i) The number of persons age 60 and over who have annual incomes below 125% of the poverty level, plus

(ii) The number of persons age 75 and over weighted two times, plus

(iii) The number of minority persons, as defined by the Governor's Office of Planning and Budget, age 60 and over.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Governor's Office of Planning and Budget.

(4) Base Restrictions for OAA.

(a) If any AAA in existence on July 1, 1986, should in the future sub-divide into two or more AAAs, the base amount allocated to the original AAA shall be divided proportionally among the new AAAs.

(5) Base Factor Funds.

(a) Base factor funds shall consist of those federal Title III and state funds appropriated for Title III social and nutrition services and allocated as base funds in FY 2003.

(6) Funding Distribution for OAA.

(a) Distribution of funds under the formula shall be as follows:

(i) Base factor funds;

(ii) 7.5% of total remaining formula funds allocated to the land area factor; and

(iii) 92.5% of total remaining formula funds allocated to the population factor.

R510-100-2. In-Home Services.

(1) Affected Funding Sources for In-Home Services.

(a) The funding formula shall include all federal and state funds appropriated for use by local area agencies on aging to be used for in-home services with the exception of:

(i) funds allocated under Section R510-100-1 and

(ii) funds identified under Section 62A-3-108(2), and

(iii) Adult Services funded under the Division pursuant to Section 62A-3-301 et seq.

(2) Funding Formula Factors for In-Home Services.

(a) The funding formula shall include the following factors:

(i) Land area factor consisting of each AAA's proportion of the state's total adjusted square miles.

(ii) Population factor comprised of each AAA's proportion of the designated population factors.

(iii) Base amount of $35,000 allocated to each Area Agency on Aging.

(b) Designated population factors shall consist of the following five categories and the percentage that the number from each category represents of the total combined number of all five categories:

(i) The number of minority persons, as defined by the Governor's Office of Planning and Budget, age 60 and over and at or below the federal poverty level,

(ii) The number of persons with a disability 60 years of age and older and at or below the federal poverty level,

(iii) The number of persons 60 to 74 years of age at or below the federal poverty level calculated as its proportion of the total clients 60 years of age and older served by the In-Home Services program for the previous state fiscal year, and

(iv) The number of persons 75 to 84 years of age at or below the federal poverty level calculated as its proportion of total clients 60 years of age and older served by the In-Home Services program for the previous state fiscal year, and,

(v) The number of persons 85 years of age and older at or below the federal poverty level calculated as its proportion of the total clients 60 years of age and older served by the In-Home Services program for the previous state fiscal year.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Governor's Office of Planning and Budget.

(3) Funding Distribution for In-Home Services.

(a) Distribution of funds under the formula will be as follows:

(i) 7% of total formula funds allocated to the land area factor; and

(ii) 93% of total formula funds allocated to the population factor.

(4) Funding Formula Phase-In for In-Home Services.

(a) The Division is authorized to apply an adjustment to the allocation calculated in accord with funding formula contained in paragraph (2) of this section for five fiscal years beginning with FY 2016.

(b) Each adjustment shall be applied to the allocation to all area agencies calculated in accord with the funding formula contained in paragraph (2) of this section and shall represent 20% of the difference in funds compared with the fiscal year 2015 funding in accord with paragraph (2) of this section.

R510-100-3. Long-Term Care Ombudsman Program.

(1) Affected funding sources for the Long-Term Care Ombudsman (LTCO) Program.

(a) All Federal and State funds received for delivery of the LTCO Program with the exception of State Division administrative funds.

(i) Funding Formula for the LTCO Program.

The funding formula for the LTCO Program shall allocate dollars to each designated AAA based on the following factors:

(A) Federal Funds.

Using the base allocation of federal funds available for the LTCO program during State Fiscal Year 1993, each designated

AAA will receive an equal share of the dollars available.

Additional funds that may become available above the base allocation will be distributed based on each AAA proportion of long-term care beds in the State as reported by the State Department of Health and the Division for the preceding year. Long-term care beds shall include licensed nursing facility beds, licensed residential care beds, and approved adult foster care beds.

(B) State General Funds.

A base allocation of $60,000 shall be distributed equally to each designated AAA.

State General funds in excess of this base allocation shall be distributed based on each AAA's proportion of long-term care beds in the State, as reported by the State Department of Health and the Division for the preceding year.

KEY: elderly, funding formula, long-term care ombudsman
June 30, 2015 62A-3-108
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-101. Carryover Policy for Title III: Grants for State and Community Programs on Aging.
R510-101-1. Policy.

In accordance with Federal regulation 45 CFR, Chapter XIII Subchapter C, Part 1321.37, the Division of Aging and Adult Services distributes OAA Title III social and nutrition dollars to AAA according to an established intrastate funding formula. All Title III funds of a specified federal year unspent at the end of that year's state contract period shall be re-contracted to the AAA in the succeeding year's contract. Administration of federal carryover funds must conform with federal laws and regulations. All Title III funds carried over by the AAA from one state fiscal year to the next must be spent according to a written amendment to the Area Plan as approved by the Division.

R510-101-2. Process.

2.1 The amounts of carryover funds in all Title III categories shall be determined at the time of the final state fiscal year financial report as submitted by the AAA and as reviewed and finalized by the Division.

2.2 Upon Division approval of an Area Plan amendment which designates amount and use of carryover funds, the Division will amend the current state year AAA contract to add all Title III carryover funding from the previous year.

2.3 The Division shall spend out the previous year's funds prior to spending current funds.

KEY: elderly, carryover funding*
1987 62A-3-104
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-102. Amendments to Area Plan and Management Plan.
R510-102-1. Area Plan Amendments.

A. Area Plan Amendments will be made only with the approval of the Division.

B. The AAA must submit Area Plan amendments in accordance with the uniform area plan format and other instructions issued by the Division.

KEY: elderly, service coordination
1992 62A-3-104
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-103. Use of Senior Centers by Long-Term Care Facility Residents Participating in Activities Outside Their Planning and Service Area.
R510-103-1. Criteria for Use.

(1) Eligibility: Long-term care facility residents shall have access to senior centers and programs operated within which receive financial assistance through the Older Americans Act (OAA), Social Services Block Grant, or any other source of federal funds.

(2) Fees and Contributions:

(a) Facility residents who individually participate and who are age 60 or over are encouraged to donate at the contribution rate as established by the responsible AAA Advisory Council and/or Nutrition Council for all programs. The amount of contribution will be confidential.

(b) Facility residents who are under age 60 shall be subject to the fee for participants under 60 as established by the responsible AAA Advisory Council and/or Nutrition Council.

(c) Long-term care residents who elect to take a special class or participate in an activity where there is a charge will be required to pay the fee in accordance with the senior center's policy. This would include requested transportation costs to and from such activities.

(d) The source of contributions and fees for group participants shall be the long-term care facility's responsibility if the use of senior centers is an activity planned by the long-term care facility.

(e) Contributions and fees shall not originate from the resident's personal needs allowance unless participation in the senior center is totally at the request of an individual or their family or legally responsible person, and participation in senior centers is not a component of the facility's activity plan.

(6) Visiting senior center groups shall be given an opportunity to donate a confidential contribution to the planned group activity.

(3) Supervision: Residents who participate in the senior center programs as part of a long-term care group planned activity and/or who require supervision shall be accompanied by a facility staff member or other responsible parties.

(4) Advance Reservations: As is the standard policy for all senior center participants, activities by long-term care facility residents who participate in senior center activities shall require an advanced reservation.

(5) Complaints Regarding Adherence:

All complaints regarding adherence to this regulation by long-term care facilities should first be reported to the facility administrator. If this action does not resolve the complaint, the concern should be directed to the State Long-Term Care Ombudsman (LTCO) Program where its resolution will be coordinated with the appropriate agencies.

KEY: elderly, senior centers, nursing homes
February 3, 1999 62A-3-104(4)
Notice of Continuation June 30, 2016 62A-3-107 through 108

R510. Human Services, Aging and Adult Services.
R510-104. Nutrition Programs for the Elderly (NPE).
R510-104-1. Purpose.

This Rule explains and clarifies the senior nutrition programs administered in Utah.

R510-104-2. Authority.

This Rule is authorized by 62A-3-104; 42 USC Section 3001

R510-104-3. Nutrition Services Principles.

(1) The Division shall develop a comprehensive and coordinated nutrition service system statewide. The Division shall encourage and assist the AAAs in utilization of resources to develop greater capacity in their nutrition programs and services. The Division will approve a nutrition screening tool that will be used to identify nutritional risk or malnutrition. All seniors participating in the Nutrition Program For The Elderly, Congregate and Home Delivered Meals, are strongly encouraged to complete the nutrition screen. If an individual does not want to fill out the screening form, he or she will not be denied a meal. A nutrition screen may be required by a AAA for a client to receive liquid meals.

(2) The Division shall monitor, coordinate, and assist in the planning of nutritional services with the advice of a registered dietitian or an individual with comparable expertise. The nutrition service system shall provide older Utahns, particularly those in the greatest economic and social need categories, with particular attention to low-income and low-income minorities, access and outreach to nutrition services, nutrition education and nutritionally sound meals, to promote better health through improved diet.

(3) Policy and Procedures approved by the Utah State Board of Aging and Adult Services shall be used by the Division and its contractors/grantees in the conduct of all functions and responsibilities required in carrying out services and funding categories of the Title III Part C Nutrition Program, including Congregate Meals (Part C-1), Home-Delivered Meals (Part C-2), Nutrition Education and Nutrition Outreach, and the Nutrition Services Incentive Program (NSIP).

R510-104-4. Definitions.

(1) Congregate Meals -- Meals provided five or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by regulation) and a lesser frequency is approved by the State agency), provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide; which shall be provided in congregate settings, including adult day care facilities and multigenerational meal sites; and which may include nutrition education services and other appropriate nutrition services for older individuals.

(2) NSIP -- Nutrition Services Incentive Program. The NSIP Program authorizes cash payments to State Units on Aging (SUA) as a proportional share of the Federal fiscal year allocation. The allocation is based on the number of meals served by a single SUA in the previous year in proportion to the total number of meals served by all SUAs that year. Meals counted for purposes of NSIP reporting are those that satisfy the requirements of Title III-C of the OAA.

(3) Provisional Meals -- Meals delivered to a congregate meals participant who is unable to personally visit the congregate meals site for a limited period of time (to be determined by the AAA). The AAA has the discretion to determine what circumstances would make provisional meals appropriate.

(4) NPE -- Nutrition Programs for the Elderly. The term primarily refers to Congregate Meals and Meals on wheels which utilize state and federal funding to provide services to seniors, although Food Stamps may also be considered as a NPE.

(5) Division -- Utah State Division of Aging and Adult Services.

(6) AAA -- Area Agency on Aging.

(7) Dietary Guidelines for Americans -- The "Dietary Guidelines for Americans" has been published jointly every 5 years since 1980 by the Department of Health and Human Services (HHS) and the Department of Agriculture (USDA). The Guidelines provide authoritative advice for people two years and older about how good dietary habits can promote health and reduce risk for major chronic diseases. They serve as the basis for Federal food and nutrition education programs. The Guidelines also clarify the Daily Reference Intake (DRI), which replaces the Recommended Daily Amounts (RDA) previously used to determine the nutritional values of the meals served under the nutrition programs. The complete document can be accessed at http://www.health.gov/dietaryguidelines/dga2005/document/default.htm

(8) Modified diets -- Now referred to as Medical Nutritional Therapy by the American Dietician Association, this refers to meals that have been altered to make them compatible with a particular client's nutritional needs. Examples include limiting sodium for a client with high blood pressure or restructuring the portions or components of a meal to accommodate a client with diabetes.

(9) NAPIS -- National Aging Program Information Systems. This system allows the Utah Division of Aging and Adult Services to report the services provided under Titles III and VII of the Older Americans Act. RTZ's GetCare system is the vehicle the Division uses to interface with the federal NAPIS system.

(10) Nutrition Case Manager -- the AAA staff person who evaluates a potential client's situation and recommends an appropriate nutrition plan (i.e., Meals on Wheels), as well as other services where appropriate.

(11) OAA -- The Older American's Act. Originally signed into law by President Lyndon B. Johnson the act created the Administration on Aging and authorizes grants to States for community planning and services programs, as well as for research, demonstration and training projects in the field of aging. Later amendments to the Act added grants to Area Agencies on Aging for local needs identification, planning, and funding of services, including but not limited to nutrition programs in the community as well as for those who are homebound; programs which serve Native American elders; services targeted at low-income minority elders; health promotion and disease prevention activities; in-home services for frail elders, and those services which protect the rights of older persons such as the long term care ombudsman program.

R510-104-5. General Provisions.

(1) Nutritional Requirements:

(a) Food Requirements: AAAs shall ensure that the meals provided through their nutrition projects comply with the DRI Guidelines for Americans. Compliance shall be documented for each meal served by the nutrition provider.

(i) Handbook 8 of USDA (located at http://www.nal.usda.gov/ref/USDApubs/aghandbk.htm#sortnbr)

(ii) Computer analysis based upon an acceptable software program approved by the Division.

(iii) Computation of food values for portions of food commonly used.

(b) Menu Cycles and Analysis:

(i) Nutrition providers shall send an approved copy of the menus to be used to the appropriate nutrition site(s) and to the AAA.

(c) A registered dietitian and/or nutritionist shall sign off on the menus and recipes used under the nutrition programs to ensure meals served meet DRI guidelines.) Any substitutions (deviations) from the approved menu(s) shall be documented and reported by the nutrition project director.

(ii) Service providers contracting with a third party shall stipulate in the contract that menus must be received by the service provider at least one week prior to use for analysis and approval.

(iii) Any substitutions to the original menus must be documented and kept on file. For audit purposes, menus shall be maintained for a minimum of 3 years, or until disposition is authorized by the grantor agency.

(d) Modified Diets:

(i) Modified diets shall be available to program participants. Each project will provide modified menus where the AAA director feels they are feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. The AAA shall be responsible for the method of obtaining orders for modified diets, maintaining such orders on file and reviewing them.

(e) Utensils for the Blind and Disabled: Upon request, the AAA may provide the appropriate food containers and utensils for the blind and the disabled. The provider is required to submit nutrition program data to the National Aging Program Information System (NAPIS).

(f) A cold "sack lunch" that meets the DRI requirements may be offered to eligible participants.

(g) A written copy of the appeal process shall be made available to those denied this service.

R510-104-6. Eligibility for Nutrition and Nutrition Support Services.

(1) All persons aged 60 and older and their spouses, regardless of his/her age, are eligible for OAA nutrition services. If sufficient resources are not available to serve all eligible individuals who request a service, the AAA shall ensure that preference is given to those of greatest social or economic need, with particular attention to low-income, limited English speaking individuals and low-income minorities.

(2) Other Individuals who may receive congregate and home-delivered meals at the election of the AAA include those listed below. These individuals do not need to pay for the meal, but are encouraged to make the recommended donation as a qualified senior would:

(a) Individuals with disabilities (who has not attained the age of 60), if they reside in a housing facility primarily occupied by elderly persons that has a congregate meal site funded by the OAA on the premises.

(b) Clients of Home and Community-Based Alternatives program who are under 60 may be allowed to participate in the nutrition program as capacity allows. To be eligible to receive meals through nutrition programs, the client's case manager must include nutrition services in the care plan. If the participant is under 60, the Alternatives program shall pay the actual cost of the meal as determined by the AAA, rather than the suggested donation.

(c) Individuals with disabilities who reside at home with and accompany to a congregate meal site an older individual who may be eligible under the Act.

(d) Volunteers who are specifically assist with the nutrition program may be given a meal regardless of age.

R510-104-7. Providers Selection.

(1) The AAA shall make awards for congregate and home-delivered nutrition services to providers that furnish either or both types of service. Each AAA shall assure that each service provider selected meets all applicable Federal, State and Local regulations.

(2) Each AAA, when feasible, shall give preference in making awards for home-delivered meal services to providers that meet the following:

(a) Organizations that have demonstrated an ability to provide home-delivered meals efficiently and reasonably, andthat furnish assurances to the AAA that they will maintain efforts to solicit voluntary support and that OAA funds made available will not be used to supplant funds from non-federal sources.

(b) Food service certification in applied food service sanitation by nationally recognized industry programs and approved by the Utah State Department of Health, shall be required for one person per shift where food is prepared and cooked for NPE meals.

(3) Each AAA shall provide a mechanism that will assure the review of need for home-delivered meals for absent participants at the Congregate Sites. Each AAA shall develop a policy, to be reviewed and approved by DAAS regarding regular attendees who cannot attend the congregate site due to illness or other reasons, which determines whether and how often a client may receive provisional meals delivered to them from the congregate site by a spouse, friend or volunteer. If provisional meals are needed, AAA staff must document the client's needs and should consider the appropriateness of encouraging the client to participate in the home delivered meal program.

R510-104-8. Additional Meal Policy.

(1) Nutrition providers may serve a second meal or third meal if planned as an objective in the Area Plan. When two meals are served per day, they shall provide 66 2/3% of the DRI. When three meals are served per day, they shall provide 100% of the DRI. Provision of more than one meal qualifies for NSIP reimbursement if each meal meets the 33 1/3% DRI. Second helpings of the same meal that do not constitute a complete meal (i.e., a second serving of mashed potatoes) do not qualify for NSIP reimbursement. A second complete meal complying with the DRI, provided to a senior as a second meal, does qualify for NSIP reimbursement.

(2) To qualify second meals in the local meal county reports for USDA reimbursement, AAAs will be allowed to serve up to 1.5% of the total meals per quarter in second meals without formally developing a local second meal policy. If second meals claimed in the local meal count reports are equal to or greater than 1.5% of total first meals per quarter, a second meal policy shall be developed by each local AAA for USDA reimbursement.

(3) Nutrition services providers may serve a second meal to Senior Citizens who have been identified through nutrition screening to be at nutritional risk and/or socially or economically in need. The AAA shall have written program objectives which are specific, verifiable, and achievable for nutrition service provider(s), including the number and frequency of meals to be served at each designated congregates site or center, and to individual recipients in the home delivered meal program, if providing more than 1.5% of total meals as second meals.

(a) Second meals should be packaged so that the food will more likely be kept at proper storage temperatures for a reasonable length of time.

(b) The participants who receive a second meal shall be given the opportunity to make a second confidential contribution for that meal.

(c) Records will be maintained by the nutrition provider(s) on all additional meals served to eligible participants.

R510-104-9. Emergency Meals.

(1) AAAs shall develop written procedures to be followed

by the service providers for the provision of emergency meals in the event of weather related emergencies, disasters, or situations which may interrupt meal service or the transportation of participants to the nutrition site. Through the intake, assessment, and re-evaluation process, clients will be identified who do not have food within their home, or through nearby support networks to provide the nutrition they need to last through short term emergencies.

R510-104-10. Outreach.

(1) Each nutrition provider shall establish outreach activities which encourage the maximum number of eligible clients to participate. Nutrition Education: Each project shall provide nutrition education on at least a semi-annual basis.

R510-104-11. Medical Meals.

(1) In situations where nutritional considerations make solid foods inappropriate, the need for nutrient supplements to include medical meals (meeting the required RDI Guidelines) may be part of medical nutrition therapy recommended by a registered dietitian, registered nurse or physician, primarily when the participant cannot tolerate or digest regular meals.

(2) Only seniors are eligible for medical meals purchased through the Nutrition Program for the Elderly (NPE) funding. Exceptions can be made for Alternatives clients under 60. Additionally, AAAs always have the discretion to use county dollars in any way they see fit.

(3) A medical or secondary meal shall only be offered in place of regular food as the first meal. In order to receive medical meals through the Nutrition Programs for the Elderly (NPS), the following requirements must be met:

(i) A demographic questionnaire must be completed (for the AAA records).

(ii) A physician must issue a prescription, or a clinically based assessment must be completed by a dietician or nurse.

(4) A medical meal distributed through the AAAs' NPE Programs must meet the 33 1/3 DRI nutrient requirements. If the medical meal is picked up by the client or client representative at a senior center, the meal will count as a congregate meal (C1) and if the medical meal is delivered to the client's home by the AAA staff, the meal will be considered a home delivered meal (C2).

(5) The Participant may not be provided more than a one month supply of medical liquid supplement at one time.

(6) A confidential contribution system shall be in place with a suggested donation in order to qualify the medical meal for the USDA cash-in-lieu reimbursement.

R510-104-12. Food Service Management.

(1) Food Service Management: All AAAs shall ensure the following:

(a) Each meal project shall comply with applicable State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in storage, preparation, service, and delivery of meals to older adults. Compliance with current Serv-Safe guidelines (http://www.servsafe.com/) ensures proper compliance to the State and local requirements. All food used by the nutrition service provider(s) must meet standards of quality, sanitation, and safety applying to foods that are processed commercially and purchased by the project. No food prepared or canned in a home or any other non-licensed facility may be used in meals provided by a project financed through the nutrition service provider(s) award.

(b) Inventories: Each AAA shall require that accurate inventory records for consumable goods be maintained for four years by nutrition projects funded in whole or in part by the Older Americans Act funds. Either the periodic or perpetual system of inventory shall be acceptable, if conducted consistent with generally accepted inventory control principles.

(c) Training: The provider shall plan and provide training and supervision in sanitation, food preparation, and portion control by qualified personnel for all paid and volunteer staff who prepare, handle and serve food. Each of these individuals must have a current Food Handlers Permit.

(d) Refrigerated Storage: The refrigeration cooling period for hot food brought below 40 degrees Fahrenheit shall not exceed 4 hours.

(i) All prepared foods that are frozen in a nutrition project kitchen shall be chilled in a rapid chills system which reduces the temperature of foods to 70 degrees within 2 hours and shall be cooled to an internal product temperature of 41 degrees F or below within the following 2 hours.

(e) Frozen Food Requirements: All packaged frozen meals and freezing methods used to freeze meals utilized by the nutrition project, must meet the requirements of the State of Utah Health Department regulations.

(f) Hot Food Requirements:

(i) Beef products including hamburger shall be cooked to an internal temperature of 155 degrees F, poultry shall be cooked to an internal temperature of 165 degrees F and pork shall be cooked to an internal temperature of 165 degrees F.

(ii) All hot foods shall be maintained at 140 degrees F or above, from the time of final food preparation to completion of service.

(g) Cold Food Requirements: Cold foods shall be maintained at 41 degrees F or below from time of initial service to completion of service.

(h) The nutrition project shall make temperature checks of all prepared, received and transported meals.

(i) Staffing: The nutrition service provider shall:

(i) Be encouraged by the AAA to give preference to employing those qualified persons age sixty (60) and over, including those of greatest economic or social need;

(ii) Designate a person responsible for the conduct of the project who has the necessary authority to conduct day-to-day management functions of the provider;

(iii) Use a registered dietitian or nutritionist to provide necessary nutrition services.

(j) If serving a meal to staff under 60 deprives elderly target population individuals with reservations from securing a meal, other arrangements should be made for staff.

R510-104-13. Contribution Policy.

(1) The actual cost, as defined by the AAA and reported to the State, of a congregate meal shall be posted at the nutrition site. Suggested contribution and actual cost shall be posted in a prominent conspicuous location.

(2) Each eligible participant shall have an opportunity to voluntarily and anonymously contribute toward the cost of a provided meal service.

(3) Persons under the age of 60 shall pay the full cost of the meal, which shall be collected and accounted for separately. Exceptions can be made for the individuals previously listed (spouses of seniors regardless of age, individuals with disabilities who reside with seniors, individuals providing volunteer service, and underage individuals residing in senior housing sites in which congregate meals are served) who are encouraged to make the standard meal donation.

(4) Each AAA shall establish and implement procedures which will protect the privacy of the client's decision to contribute or not contribute toward the meal service rendered.

(a) There shall be locked contribution boxes in a place where anonymous donations can be made, which shall not be monitored for contributions, in order to assure the confidentiality of the donation.

(5) Participant contributions shall be counted by two persons, and both individuals shall sign a form attesting to the correct count. A copy of such signed documentation shall be

kept on file.

(6) Under no circumstances may an eligible client be denied service(s) by a provider who received funds from the AAA (for that service) because of the client's decision not to contribute for services rendered.

R510-104-14. Congregate Meals.

Requirements for Congregate Meal Providers:

(1) Each AAA and AAA Advisory Council, or local equivalent, shall determine the number of congregate sites to be established and their days of operation.

(2) Local AAA's must provide congregate meals a minimum of five days per week except in a rural area where such frequency is not feasible and a lesser frequency has been approved by the division).

(3) Leftover Food:

(a) All food transported to sites which becomes "leftover," except unopened prepackaged food, must be properly disposed of at the meal site or the main food preparation site in compliance with State Health Department regulations.

(b) AAAs shall develop policies and procedures to minimize leftover meals. Use of a reservation system for participation in the congregate meal program is recommended.

(c) Leftovers shall be offered to all participants as second helpings at those congregate settings which do not have on-site methods to preserve leftover food to meet the nutritional standards for later consumption which are approved by the State Health Department). If a complete meal is provided to a client as a second meal, the client shall be given an opportunity to make another confidential donation.

(d) Each nutrition site, in a location that is easily visible to patrons, shall have a disclaimer which states: "For Your Safety: Food removed from the center must be kept hot or refrigerated promptly. We cannot be responsible for illness or problems caused by improperly handled food."

(e) No food shall be taken from the site by staff.

(f) Leftover foods at on-site cooking facilities shall be properly refrigerated and incorporated into subsequent meals whenever possible.

(4) Food being served shall be protected from consumer contamination by the use of packaging or by the use of an easily cleanable counter, serving line, or salad bar protector devices, display cases, or by other means which minimize human contact with the food being served. Enough hot or cold food serving containers shall be available to maintain the required temperature of potentially hazardous food.

R510-104-15. Home Delivered Meals.

All individuals requesting home-delivered meals shall be assessed and only those individuals who have been determined to be homebound, as defined below, shall be eligible for a home-delivered meal.

(1) Homebound Status:

(a) A person shall be determined to be homebound if he/she is unable to leave home without assistance because of a disabling physical, emotional or environmental condition.

(b) Homebound status shall be documented. The Division shall approve the method of assessment to ensure standard measurable criteria.

(c) Written documentation of eligibility shall be maintained by the AAA.

(d) Homebound status shall be reviewed or re-evaluated on a regular basis, but not less frequently than annually.

(i) A waiver of the full annual assessment may be approved by the AAA director or designee. A written statement of waiver shall be placed in the client's file and shall be reviewed annually.

(e) Top priority may be given to emergency requests. Home-delivered meals for an emergency may start as soon as possible after the determination of urgent need has been made. A full assessment will be made within 14 calendar days from the date of request to determine continued eligibility.

(2) Requirements for Home-Delivered Meal Providers:

(a) Home-delivered meal service within a Planning and Service Area (PSA) shall be available 5 or more days per week.

(b) Division approval must be obtained for Home-delivered meal plans that provide meals 4 days/week or less in rural areas.

(3) A home-delivered meal, intended for a meal client that cannot be delivered, may be given to another home-delivered meal client as a second meal. This second meal would qualify for NSIP reimbursement, provided the recipient meets the eligibility criteria.

R510-104-16. Financial Policies.

Project income generated by Title III-C can only be used to:

(1) expand the number of meals provided or to facilitate access to such meals (transportation and outreach);

(2) integrate systematic nutrition screening for nutrition/malnutrition and food insecurity; or

(3) to provide other supportive services directly related to nutrition services, such as outreach, information and referral, transportation, access to grocery shopping, help with food stamp procurement, social activities in conjunction with a meal, and nutrition education.

R510-104-17. Restriction on Use of Funds.

(1) Program income generated by OAA Title III Part C-1 and Part C-2 may be used as the additional alternative (to expand the number of meals provided, or to facilitate access to such meals or to provide other supportive services directly related to expanding nutrition services) or the cost sharing alternatives as stated in 45 CFR 92.259(g)(2) (to match federal and/or state funds) or, a combination of the two alternatives.

(2) To defray program costs, a AAA which serves as the nutrition provider may also perform Nutrition Services for other groups and programs outside the parameters of the Nutrition Program for the Elderly under the OAA, providing such services will not interfere with the project or programs for which the contract was originally granted. These extra nutrition activities shall be managed in a manner that does not impede the preparation or delivery of nutrition services to the elderly, and shall charge the full cost of preparation and delivery of the nutrition services as set forth by the provider. When persons 60 years of age and older participate in these "special events," they assume the identity of the activity and are obligated to pay the requested fee for participation. This shall not be confused with the donation policy of the Title III Nutrition Programs. A nutrition provider who contracts with a AAA is obviously free to serve other clients as it wishes.

R510-104-18. Nutrition Services Incentive Program (NSIP) Participation (Commodities and Cash-In-Lieu of Commodities).

Currently, the NSIP program is used by the federal government to provide reimbursement for meals served under nutrition programs that meet the reporting criteria for federally funded meals. The NSIP reimbursements have, for the most part, replaced the U.S. Department of Agriculture (USDA) practice of presenting nutrition service providers with either food commodities or cash-in-lieu of commodities to supplement the nutrition providers' resources. However, the USDA reserves the right to provide cash or commodities in the future.

(1) Donated Food Standard Agreement: The AAA or nutrition service provider may enter into a written agreement with the Department of Human Services Federal Food Program of the State of Utah and shall follow all procedures of the

"Agreement for Commodities Donated by the U.S. Department of Agriculture."

(2) USDA cash-in-lieu of commodities payments or revenue earned, depending on whether the accounting for the USDA program is on a cash or accrual basis, shall be used to offset the cost of raw food and the cost of purchased meals.

(3) Cash-In-Lieu of Commodities:

(a) AAAs shall promptly disburse all USDA cash-in-lieu of commodities to nutrition providers in their planning and service area that are funded with Title III Part C-1 and Part C-2 funds.

(b) AAAs shall ensure that payments received by providers in lieu of commodities shall be used solely for the purchase of:

(i) United States agricultural commodities and other foods produced in the United States; or

(ii) Meals furnished to them under contractual arrangements with food service management companies, caterers, restaurants, or institutions, have provided that each meal contains United States produce commodities or foods at least equal in value to the per meal cash payment which the nutrition service providers have received.

(4) Monitoring, Withholding or Recovering Cash Payments:

(a) The Division and the AAAs shall monitor and assess use of payments received in lieu of commodities. Such monitoring shall include periodic on site examination of all pertinent records maintained by service providers, as well as, all such records maintained by suppliers of meals purchased under contractual arrangements.

(b) The Division will withhold or recover cash payments in lieu of commodities from an AAA if it determines, through a review of such AAA's reports, program monitoring, financial review or audit, that the AAA has failed to comply with the provisions of this section, or otherwise have failed to adequately document the basis for payments received during the fiscal year.

(c) AAAs which do not expend the Cash-In-Lieu within a maximum of two quarters after it has been allocated by the Division shall be evaluated for need and other available resources at the local AAA. Their rate of entitlement may be reduced in succeeding allocation periods.

(5) USDA Documentation:

(a) AAAs shall ensure that the cost of the U.S. grown food purchased during the project year is at least equal to the amount of the USDA reimbursement under the cash in lieu of commodities program. This documentation shall be based on paid invoices.

(b) In the case of meals served under contractual arrangements with food service management companies, caterers, restaurants or institutions, copies of menus and invoices of food purchases that demonstrate that each meal served contained United States produced commodities or food at least equal in value to the per meal cash payments, constitutes adequate documentation.

R510-104-19. Transfer of Funds.

Statewide transfers between OAA Title III B and C awards shall not exceed 20%. Transfers between Part C-1 and Part C-2 awards shall not exceed 40% of any one funding category unless the Division requests and receives written approval from the U.S. Department of Health and Human Services Assistant Secretary for Aging.

R510-104-20. Documentation and Record Keeping Requirements.

(1) AAAs shall document and maintain all records and forms required to meet state and/or federal requires of the OAA and the USDA (United States Department of Agriculture) for three years.

(2) The number of participants participating in Title III C-1, C-1 and their names shall be kept on file in the Planning and Service Area for three years.

(3) AAAs shall work with the Division to complete the annual federal NAPIS (see definitions) reporting requirements by use of the current data management system or by other means as agreed to by the Division.

KEY: elderly, nutrition, home-delivered meals, congregate meals

April 15, 2013 62A-3-104

Notice of Continuation June 30, 2017 42 USC Section 3001

R510. Human Services, Aging and Adult Services.
R510-106. Minimum Percentages of Older Americans Act, Title III Part B: State and Supportive Services Funds.
R510-106-1. General Principles.

(1) In accordance with the (OAA), as amended in 2000, the following general principles apply to setting minimum percentages which must be spent for Access, In-Home, and Legal Assistance:

(a) In-Home, Access, and Legal Assistance are priority services.

(b) "The minimum percentage is intended to be a floor, not a ceiling. AAAs are encouraged to devote additional funds to each of these service areas to meet local needs." (Source: House of Representatives Conference Report regarding the 1987 Amendment to the Older Americans Act.)

(c) AAAs should be given flexibility to administer their programs at the local level.

(d) The minimum percentage should be applied to both Title IIIB and State Service Dollars.

(2) The minimum percentages shall be established at: 8% for Access Services, 8% for In-Home Services, and 2% for Legal Assistance.

(3) The minimum percentages will be based upon Title III B dollars and State Service dollars that are distributed by formula to the AAAs.

(4) The minimum percentages will be reviewed on an annual basis.

R510-106-2. Criteria for Approval of Title IIIB Priority Services Waiver.

(1) AAAs which do not plan to fund a Title IIIB priority category of service at the required minimum percentage must request a waiver. In order to be approved, the waiver request must demonstrate to the State that the need for the service is adequately met through other means.

(a) The waiver request must include:

(i) Categories of service to be waived, i.e. access, in-home, or legal.

(ii) Extent of waiver requested, i.e. request to provide zero funding or request to provide some funding, but not at the minimum percentage required.

(iii) Justification that services provided in the planning and service area for the waiver category are sufficient to meet the need. Justification should include: types of services in the category available in the planning and service area, funding sources and amounts available, history of service usage, needs assessment data, sources of information, efforts to publicize services, comments from providers of services, waiting lists, etc.

(iv) Documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, including:

(A) Copies of publicity to conduct a hearing.

(B) Lists of individuals and agencies notified.

(C) Lists of individuals or service providers who requested a hearing.

(v) If a hearing is requested, documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, will be needed, including:

(A) copies of publicity for to conduct a hearing;

(B) lists of individuals and agencies notified; and

(C) lists of individuals or service providers who requested a hearing.

(vi) Record of public hearing.

(2) In order for the Area Agency on Aging (AAA) to demonstrate public knowledge about ability to request a hearing, it is recommended that the AAA:

(a) Publicize the hearing in advance so that interested parties can arrange to attend.

(b) Use publicity means that will enable potentially interested parties to be aware of the ability to request a hearing, to have sufficient background to understand the purpose of the hearing, and to be able to testify at the hearing if desired. In addition to a legal notice in the classified section of a newspaper, letters, flyers, larger newspaper articles or other similar announcements are recommended for the purpose of granting a waiver.

(c) Notify interested parties of the ability to request a hearing, such as those individuals or groups specified below:

(i) All Categories of Service: Clients, potential clients, senior advocates, local advisory council members, designated state advisory council member for the area, representatives or relatives of clients, local elected officials, Department of Human Services, agency staff, and State Division of Aging and Adult Services staff, etc.

(ii) Access Services: Information and referral providers, public or private transportation providers, outreach staff.

(iii) In-Home Services: Chore provider agencies, home health agencies, local health departments, homemaker provider agencies, friendly visitor and telephone reassurance agencies or volunteers, homemakers, personal care aides, and home health aides.

(iv) Legal Assistance: Legal Services Developer, Utah Legal Services Corporation, representatives of the Utah Bar Association.

KEY: elderly
June 30, 2003 62A-3-101 et seq.
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-107. Title V Senior Community Service Employment Program Standards and Procedures.
R510-107-1. Purpose.

(1) Provide useful part-time community service employment for persons with low incomes who are 55 years old or older and provide useful community services.

R510-107-2. Program Standards and Procedures.

(1) The Division's standards and procedures for this program are incorporated by reference to be 20 CFR Part 641 as published April 9, 2004.

KEY: elderly, employment
August 17, 2004 62A-3-104
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-108. Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting Under the Older Americans Act.
R510-108-1. Definition.

For the purpose of reporting for Title III of the (OAA), rural shall be defined as any county having a total population of less than 100 persons per square mile. This means that all counties in Utah will be considered rural for Title III reporting except Davis, Salt Lake, Utah, and Weber Counties.

KEY: elderly, rural policy
1988 62A-3-104
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-109. Definition of Significant Population of Older Native Americans.
R510-109-1. Definition.

A Planning and Service Area has a "significant population of older Native Americans" when 50% or more of its 60+ minority population is older Native Americans.

KEY: elderly, native american, population
1989 62A-3-104
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-110. Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services.
R510-110-1. Definitions.

A. Eldercare: a service provided by a corporation on behalf of its employees who have caregiver responsibilities for elderly relatives. The service includes information and referral, but may extend to other types of services and programs, as determined by the corporation.

B. Case Management: a service with several components which collectively make up case management. These components include a combination of some or all of the following:

(1) Intake and Screening: an initial contact with the AAA from the company requesting case management services.

(2) Assessment: a face-to-face evaluation utilizing a standardized Division assessment tool. The assessment provides some or all of the following information regarding the individual:

(a) functional level, including ADL and IADL status;
(b) cognitive status;
(c) health status;
(d) current living arrangement; and
(e) use of formal and informal support systems.

(3) Care Planning: a determination of the appropriate and available mix of formal and informal services and support systems required to meet the individual's long-term care needs. A care plan is then developed.

(4) Care Plan Implementation: assessment and coordination of the appropriate services. It also includes assisting the individual to make the necessary financial arrangements as required.

(5) Continued Care Management: monitoring, reassessment, and termination components of case management. More specifically this includes:

(a) monitoring the service delivery, quality of care provided, and status of the individual;

(b) reassessing the individual's cognitive status, health status, and functional level as they relate to the care provided, and making appropriate changes as needed; and

(c) closing the case once an individual no longer requires or is eligible for case management.

C. Entrepreneurial Activities of AAAs include the manufacturing, processing, selling, offering for sale, rental, leasing, delivering, dispersal or advertising of goods or services.

R510-110-2. Purpose.

A. A basic mission of AAAs under the (OAA) is to foster the development of comprehensive and coordinated systems of services for all older persons. Activities such as eldercare and case management and other entrepreneurial endeavors, which are intended to enhance the scope and quality of the system of services available to older persons in a Planning and Service Area (PSA), are consistent with the purpose of an AAA. As a result, the Division encourages the Utah AAAs to engage in appropriate relations with private corporations in the development and implementation of eldercare programs, case management, and related activities. Utah AAAs may engage in these activities provided that those activities conform to the provision of this policy issuance.

B. The Division recognizes that an AAA, in lieu of a direct contract with a corporation, insurance company, or brokering organization may elect to provide the services directly or to join with other AAAs in those contracts. These arrangements are permissible, provided that the provisions of this policy are followed.

R510-110-3. General Provisions.

A. An AAA which engages in corporate eldercare and private case management services:

(1) shall assure that its statutory duties are maintained as prescribed in the OAA, Title III: Grants for State and Community Programs on Aging, as amended, to focus on the needs of older persons in greatest need, with particular attention to low-income minority persons; and to engage only in activities which are consistent with its statutory mission as prescribed in the OAA as amended, related federal rules and regulations, and related state policy;

(2) shall assure that activities specified under the Area plan and subsequent amendments, as approved by the Division, will not be reduced as a result of activities engaged in under this policy;

(3) shall not use Title III, Title XIX, SSBG or state funds to supplement third-party payments made by a corporation under a contract covered by this policy;

(4) shall assure that any third-party payment under a private contract fully covers the cost of services provided, including administrative and overhead costs, unless a public/private partnership is established whereby the state or federal governments or other funding source agrees to subsidize the costs of private case management or older care;

(5) shall account for private corporate contract revenues and expenditures separately from federal and state funds awarded under the Area Plan contract;

(6) shall include in their Area Plan on Aging and amendments thereto an explanation describing their relationships with private corporations and services rendered to older persons as a consequence of those agreements or contracts. These AAAs, as part of their Area Plans, shall also sign a statement of assurance of compliance with the provisions of this policy.

B. The provision of IVA(2), above, does not constrain the AAA from utilizing OAA Title III Part B: Supportive Services and Senior Centers funds to develop new resources and coordinate services to develop corporate eldercare and private case management services systems in its PSA. This complies with the statutory mission of AAAs of fostering the development of comprehensive and coordinated systems of services for all older persons, which includes all types of services and resources, both public and private, which are available to serve older persons.

C. AAA offices may engage in entrepreneurial activities if this is in response to a demonstrated need and the funds raised by these activities are used for the following purposes:

(1) to further extend services and opportunities for senior citizens, or

(2) to initiate services and opportunities for seniors, provided that these services or opportunities are compatible with the AAA functions and goals.

R510-110-4. Requirements for Contracts Between AAAs and Corporations, Insurance Companies, and Related Organizations.

A. General Provisions:

(1) An AAA cannot execute an agreement or contract that demands exclusivity; an AAA must be free to negotiate other similar agreements or contracts with other companies.

(2) An AAA cannot enter into an agreement or contract that obligates it to be identified with or to promote the company or its products or places it in a conflict of interest with its public mission.

(3) A contract must state that the AAA has the right to refuse services to a company or its employees or clients in the event that there is a potential conflict of interest for the AAA, as identified by the AAA or the Division.

(4) A contract must provide that an AAA has the right to reveal its findings, plans, and recommendations to the client,

regardless of the company's final decision regarding client eligibility and services provided.

(5) A contract must provide that all information as to personal facts and circumstances obtained by the AAA shall be treated as privileged communications, shall be held confidential and shall not be divulged without the written consent of the individual receiving the services, his attorney, or his legal guardian, except as is required by the corporation, insurance company, or brokering organization, or as may be required by the Division for the purposes of monitoring for compliance with the provisions of this policy, or as directed by the court. However, nothing prohibits the disclosure of information in summary, statistical, or other form which does not identify particular individuals.

(6) A contract must hold the AAA and the Division, where it is a party to the contract, harmless and defend them in any actions brought against them on the basis of companies' policies or decisions regarding benefits and services.

(7) Provisions of the contract may not require the withholding of information or otherwise limit the ability of the AAA to judge or act in the public interest; or restrict the ability of the Division to exercise appropriate oversight of the AAA in its fulfillment of its public mission and responsibilities.

B. Specific Provisions Regarding Long-Term Care Insurance Case Management Contracts: In contracts covering long-term care insurance case management services, companies must assure that:

(1) they are financially stable, are in good standing, and are in compliance with all statutes and rules governing insurance companies in the state of Utah;

(2) their long-term care insurance policies comply with the Utah insurance laws.

R510-110-5. Monitoring by the State Division of Aging and Adult Services.

the Division through its program monitoring activities, including financial audits, shall periodically assess AAA compliance through the following actions:

A. Review and approval of the AAA Area Plan and amendments, to be done annually and more frequently for modifications as submitted. The Division office will review:

(1) explanation describing AAA relationship with private corporations;

(2) signed statement of assurance of compliance with this policy; and

(3) related data in program and service costs in Area Plan.

B. Annual review of financial audits. The Division will review:

(1) adequacy of AAA financial control system;

(2) adequacy of AAA financial system to maintain separate accounting for different funds, including private contracts; and

(3) adequacy of AAA support documents to justify costs to each funding source.

C. Field visits and assessments of AAA activities: the Division monitoring and assessment will include a review for compliance with policy contained herein, including contract requirements.

D. When a finding shows the AAA to be out of compliance with the provisions of this policy or contract requirements, the Division may impose one or more of the following: 1) corrective actions; 2) special conditions included in the Division/AAA Contract; 3) withhold funds; 4) withhold or deny approval of the Area Plan. Process for appeal of these actions is outlined in Section 63G-6-801 through 63G-6-820, Utah Procurement Code.

KEY: eldercare
1991 62A-3-104
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-111. Policy on Use of State Funding for Travel Expenses to Assist the National Senior Service Corps (NSSC).
R510-111-1. State Funds for NSSC Programs.

(1) Purpose:

(A) The purpose of state funds for National Senior Service Corps (NSSC) programs is to provide NSSC programs with state general funds to help pay volunteer travel expenses.

(B) Definition and Service Scope:

(i) The Corporation for National and Community Service, formerly known as ACTION, a federal agency, monitors the three programs that make up the NSSC. The three programs are the Senior Companion Program, Foster Grandparent Program, and the Retired and Senior Volunteer Program.

(ii) For the purposes of this subsection, a Senior Volunteer is defined as an individual who is 60 years of age or over, or is 55 or over for Retired and Senior Volunteer Program, and is currently participating in one of the NSSC programs.

(iii) Service scope: senior volunteer job placement or site locations are not limited to senior services only. They are determined by the needs of the community and may include elementary schools, hospitals, and parks, to enhance intergenerational interaction and society's awareness of the contributions seniors make in their communities.

(C) The Division's Responsibilities:

(i) The Division will allocate state general funds, through legislative appropriation, to the local NSSC programs designated by the Corporation for National and Community Service and the Division.

(ii) The Division will be held accountable for state NSSC funds and will monitor contractors to insure that those funds are being expended in compliance with state legislative intent.

(iii) State funds for NSSC programs will be used for volunteer travel expenses support.

(A) "Volunteer travel expenses support" is defined as a payment made to retired and senior volunteers for mileage reimbursement, not to exceed the state's current rate by more than $0.05; excess auto insurance; gasoline, maintenance and insurance for service vehicles utilized for volunteer activities; van or bus drivers' salaries; contracts with transportation companies, bus fare, cab fare or passes, or other related direct NSSC volunteer travel cost.

(B) If state funds for NSSC programs are used as federal match by local volunteer programs, Corporation for National and Community Service travel reimbursement rules apply. Under these rules, volunteer programs are limited to reimbursing volunteers for the cost of traveling from their home to their volunteer station and back. Funds used as federal match can not be used to reimburse volunteers for transportation costs incurred while performing their volunteer assignments. Volunteer stations are responsible for reimbursing these costs.

(D) Contractor Responsibilities:

(i) Contractor will be held accountable for the distribution of state funds to appropriate NSSC programs. Contractor will monitor expenditures to ensure compliance with state legislative intent, as is provided in sub-section 1(C)(ii) above.

KEY: aging, travel funds, volunteer, National Senior Service Corps*
1994 62A-3-104
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-200. Long-Term Care Ombudsman Program Policy.
R510-200-1. Purpose.

A. The Long-term Care Ombudsman (LTCO) Program is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the State.

B. Operation of the LTCO Program is a joint responsibility of the Division and local AAAs. Authority to administer the LTCO Program is derived from the Older Americans Act (OAA) Title VII: Allotments for Vulnerable Elder Rights Protection Activities and Section 62a-3-201 et seq.

C. The Division will establish a State Office of LTCO.

D. The State LTCO is responsible for:

(1) oversight of the statewide LTCO program;

(2) providing training to local LTCO staff and volunteers;

(3) provision of public information regarding the LTCO program;

(4) working with federal agencies, the State Legislature, other units of state government and other agencies to obtain funding and other resources;

(5) developing cooperative relationships among agencies involved in long-term care;

(6) resolving conflicts among agencies regarding long-term care;

(7) assuring consistent, statewide reporting of LTCO program activities:

(8) monitoring local LTCO programs;

(9) providing technical assistance to local LTCO programs;

(10) maintaining close communication and cooperation in the LTCO statewide network;

(11) recommending rules governing implementation of the LTCO program; and

(12) providing overall leadership for the Utah LTCO program.

E. The Division may employ Regional Ombudsmen to assist the State LTCO in meeting his or her responsibilities. In addition to assisting the State LTCO, Regional Ombudsmen are responsible to:

(1) Spend a majority of their time providing ombudsman services, including but not limited to, investigating and resolving complaints when local ombudsmen transfer a case, providing services to assist elderly residents of long-term care facilities, informing and educating elderly residents about their rights, providing administrative and technical assistance to local ombudsmen and volunteers, providing systemic advocacy, providing training to long-term care facilities, and assisting in the development of family and resident councils;

(2) Provide monitoring, oversight, assistance and leadership to local ombudsmen and volunteers in their region;

(3) Ensure that all ombudsmen in their region adhere to established policy and procedure; and

(4) Improve consistency and quality of Ombudsmen services in their region.

F. AAAs are responsible for daily operation of the program, either directly or by contract, as defined in these rules.

G. The Division, State LTCO and AAAs must work together to protect elderly residents, promote quality care in long term care facilities, and promote the LTCO program.

R510-200-2. Definitions.

A. "AAA" means area agency on aging as designated by the Division of Aging and Adult Services.

B. "APS" means adult protective services.

C. The Division means the Division of Aging and Adult Services within the Utah Department of Human Services.

D. "Elderly resident" means an adult 60 years of age or older who resides in a long-term care facility.

E. Long-term ombudsman is a person, operating within the guidelines of the Older American Act and the policies of the Division, who advocates for elderly residents of long-term care facilities to ensure the quality and adequacy of care received.

F. "Local LTCO" means the local program and personnel designated by the Division, through each AAA, to implement the (LTCO) Program within a defined geographic area.

G. "Responsible Agency" means the agency responsible to investigate or provide services on a particular case.

H. "State LTCO" means long-term care ombudsman personnel within the Division.

I. "Long-Term Care Facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

R510-200-3. Local LTCO Program Administrative Standards.

A. AAAs shall operate the LTCO Program in accordance with the following standards:

(1) Supervision: All local LTCO shall have an identified supervisor. The person supervising the ombudsman shall meet all requirements for a supervisor as specified by the AAA and shall have at least a general knowledge of long-term care facilities.

B. Staffing: Each AAA shall recommend for certification one or more paid or volunteer staff members to serve as local LTCO.

(a) Persons assigned this responsibility shall have either education or experience in one or more of the following areas: gerontology, long-term care, health care, legal or human service programs, advocacy, complaint and dispute resolution, mediation or investigating.

(b) Assigned individuals shall be certified by the State LTCO within six months after assuming a local LTCO role.

B. The AAA shall have primary responsibility to provide for certified back-up to the local LTCO. AAAs may enter into cooperative agreements with other AAAs to provide for LTCO back-up. In emergency situations, AAAs may request back-up support from the State LTCO.

C. Local ombudsmen shall have no conflict of interest which would interfere with performing the function of this position, including:

(1) direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(2) ownership or investment interest, represented by equity, debt, or other financial relationship in a long-term care facility or a long-term care service;

(3) employment by, or participation in the management of, a long-term care facility;

(4) receiving, or having the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility.

D. AAAs shall establish, and specify in writing, mechanisms to identify and remove conflicts of interest and to identify and eliminate relationships described in paragraph 3 including mechanisms such as:

(1) methods by which the AAA will examine individuals and immediate family members to identify conflicts; and

(2) actions the AAA will require individuals and family members to take in order to remove those conflicts.

E. Local LTCO shall have the ability to act in the best interests of residents of long-term care facilities, including taking public positions on policies or actions which affect residents. Local LTCO shall not be constrained by the local

AAA or governing body from taking a stand in good-faith performance of their job.

(1) AAAs shall have on file a written description outlining the working relationship between the AAA and the ombudsman which spells out arrangements for assuring this ability.

(2) Grievance Procedure

(a) AAAs shall establish a grievance procedure to accept and hear complaints regarding an ombudsman's actions. The procedure shall allow for a final appeal to the Utah State Department of Human Services Office of Administrative Hearings.

(3) Records System

(a) AAAs shall maintain a records classification and retention program in accordance with Sections 63G-2-301 and 63A-12-101 and PL 89-73 42 USC 300-1 et seq.

R510-200-4. Local LTCO Classifications and Duties.

A. Ombudsman

An Ombudsman, who may be either a paid staff member or volunteer, may perform the following duties:

(1) investigate complaints and develop an action plan to resolve the complaint;

(2) provide supervision over the implementation of the action plan and any follow-up determined necessary;

(3) review complaints to set complaint response priorities;

(4) assign complaints to staff and volunteers;

(5) provide case consultation to long-term care facility staff; and

(6) perform duties of an assistant ombudsman.

B. Assistant Ombudsman

(1) An Assistant Ombudsman, who may be either a paid staff member or volunteer, may:

(a) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(b) observe actions and quality of care in long-term care facilities;

(c) perform complaint intake;

(d) provide residents, families, and the general public with information about the LTCO program and resident rights;

(e) provide public presentations;

(f) assist with resolution and follow-up on complaints while under the supervision of a Certified Ombudsman; and

(g) provide technical assistance to the general public and long-term care facility staff.

C. Ombudsman Program Director

(1) An Ombudsman Program Director, who may be the AAA director or his designee, may perform the duties of an Ombudsman, if certified as such, and shall:

(a) provide overall administration of the local ombudsman program;

(b) provide overall supervision of LTCO paid and volunteer staff;

(c) conduct quality assurance and complaint case record reviews;

(d) oversee the screening, hiring, and dismissal of LTCO staff and volunteers; and

(e) assess the need for regulatory changes to improve the quality of care and life for long-term care facility residents and advocate for the passage of those changes.

D. Non-certified Staff or Volunteers

Non-certified staff or volunteers may perform the following functions:

(a) complaint intake;

(b) provide public information and presentations regarding the LTCO program, long-term care in general, and other topics on which they may have expertise, as determined by the AAA;

(c) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(d) visit long-term care facilities and residents; and

(e) any other activity which does not expressly require certification and for which the AAA has determined the individual competent to engage in on behalf of the AAA or LTCO program.

R510-200-5. Certification Curriculum and Training Hours.

A. Assistant Ombudsman: Prior to applying for certification as an Assistant Ombudsman, an individual shall complete a minimum of 18 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall cover the following areas:

(1) An introduction to the LTCO Program, including a discussion of the scope of work of the LTCO.

(2) An overview of the long-term care system, including a discussion of:

(a) the types of long-term care facilities and providers, their organization and operations;

(b) federal and state regulations applicable to long-term care facilities and providers, with an emphasis on resident rights;

(c) long-term care resident profiles and methods of payment for long-term care services;

(d) the aging process and attitudes of aging; and

(e) the Aging Network and the relationship between the AAAs, the State LTCO, and various regulatory agencies.

(3) Ombudsman skills, including:

(a) interpersonal communication, observation, and interviewing;

(b) building working relationships with providers; and

(c) complaint handling, with an emphasis on intake.

(4) An overview of complaint resolution skills, with an emphasis on advocacy, negotiating, empowering residents, and follow-up activities.

(5) LTCO Program policies and procedures, including:

(a) confidentiality;

(b) access to facilities and residents;

(c) complaint investigation and resolution;

(d) reporting; and

(e) ethics.

(6) Case record documentation.

(7) Mediation and negotiation between residents.

(8) Any additional topics deemed appropriate by the State LTCO in consultation with the Division, AAAs, long-term care regulatory agencies and local LTCO Program Directors.

B. Ombudsman: Prior to applying for certification as a local Ombudsman, an individual shall complete a minimum of 30 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall include all training described in Section A plus an additional 12 hours of training covering the following areas:

(1) a more in-depth review of the content areas covered for candidates for certification as ombudsman representatives, including written exercises, case studies, role plays, research exercises, and analysis of systemic issues;

(2) development of a complaint resolution action plan;

(3) legal, administrative, and other remedies;

(4) actions regarding public disclosure of actions or inactions which affect residents of long-term care facilities, including appropriateness, confidentiality of certain information, and how to work with the media;

(5) review of client records;

(6) alternative dispute resolution options for use in complaint handling; and

(7) advocacy skills.

C. Post-tests: The post-tests referred to in Sections A and B shall be developed by the State LTCO and shall be structured in sections to correspond to major training topics. If an applicant does not receive a score of at least 70% on a post-test they shall be eligible to retake the test one time within 30 days.

If they do not receive a minimum score of at least 70% on the retake test, they will need to complete the training pertaining to the test sections on which they did not receive a passing score. Upon completion, they will be allowed to take the test one additional time. If a passing score is not obtained, the applicant will be deemed by the State LTCO to not be appropriate for certification as an Assistant Ombudsman or Ombudsman.

D. Ongoing Training: To maintain certification, an assistant ombudsman must complete a minimum of 12 hours of training annually; an ombudsman must complete a minimum of 24 hours of training annually.

(1) The State LTCO will provide for at least 48 hours of LTCO specific training per year. Training shall be scheduled at various times throughout the year and in various locations throughout the State.

(2) During the first year in which a person functions as an assistant ombudsman or ombudsman the required initial training will count toward the annual training requirement;

(3) Relevant training offered in the community can serve to meet annual training requirements in lieu of state-sponsored LTCO training on an hour-for-hour basis. Documentation of attendance at a training, including a copy of the training agenda, shall be submitted to the State LTCO for approval.

R510-200-6. Registration and Certification of Ombudsmen and Assistant Ombudsmen.

A. Central Registry

(1) The State LTCO shall maintain a central registry of all local ombudsmen and assistant ombudsmen. The registry shall retain the following information on each:

(a) the ombudsman's or assistant ombudsman's name, address, and telephone number;

(b) a summary of the ombudsman's or assistant ombudsman's qualifications;

(c) the ombudsman's or assistant ombudsman's classification;

(d) the AAA with which the ombudsman or assistant ombudsman is associated;

(e) the most recent date of certification;

(f) a position description which contains any prohibitions applicable to the ombudsman or assistant ombudsman. Prohibitions may include limitation on the duties that may be performed, limitations on the providers the ombudsman or assistant ombudsman may investigate or attempt complaint resolution with, or any limitations due to a conflict of interest; and

(g) information pertaining to any decertification actions and the results of those actions.

(2) Local ombudsman and assistant ombudsman shall register with the State LTCO through the AAA within 30 days of accepting assignment as a local ombudsman or assistant ombudsman.

R510-200-7. Decertification of Ombudsmen and Assistant Ombudsmen.

Decertification of an ombudsman or assistant ombudsman may occur through voluntary resignation or decertification by the State LTCO or AAA or sponsoring agency which employs him. A person who has been decertified may not be assigned to ombudsman duties.

A. Involuntary Decertification With Cause:

(1) No ombudsman or assistant ombudsman shall be recommended for involuntary decertification without cause. Cause may include:

(a) failure to follow policies and procedures that conform to the LTCO statute and rules;

(b) performing a function not recognized or sanctioned by the LTCO Program;

(c) failure to meet the required qualifications for certification;

(d) failure to meet continuing education requirements;

(e) intentional failure to reveal a conflict of interest; or

(f) misrepresentation of the ombudsman's or assistant ombudsman's category of certification or the duties he is certified to perform.

(2) The State LTCO and AAAs shall establish, for their respective programs, policies and procedures for recommending decertification. Those policies and procedures shall require that the State LTCO or AAA attempt to help the LTCO or Assistant LTCO attain satisfactory job performance through professional development, supervision, or other remedial actions prior to recommending decertification.

(3) AAAs recommending decertification shall state their reasons in writing and shall provide any relevant documentation to support the recommendation to the State LTCO. Notice of the recommendation for decertification and the basis for the recommendation shall be provided to the local ombudsman or assistant ombudsman at the same time that information is submitted to the State LTCO.

(4) The State LTCO shall review the recommendation and provide written notification of his decision to the AAA and the local ombudsman or assistant ombudsman within ten working days. The AAA or local ombudsman or assistant ombudsman may appeal the State LTCO's decision in accordance with the Department of Human Services Rule R497-100.

(5) When the State LTCO initiates a decertification action against a local ombudsman or assistant ombudsman, the State LTCO shall provide written notification to the AAA and the local ombudsman or assistant ombudsman. The AAA or the local ombudsman or assistant ombudsman may appeal the decision in accordance with the Department of Human Services Rule R497-100.

(6) Upon completion of the decertification actions, the State LTCO shall record the actions and results in the central registry.

B. Voluntary Decertification Without Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns due to personal reasons which would not otherwise affect certification, they shall surrender their LTCO identification card to the AAA. The AAA shall notify the State LTCO of the voluntary decertification. The State LTCO shall record the date of voluntary decertification in the central registry.

C. Voluntary Decertification With Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns for reasons which would otherwise warrant involuntary decertification, they shall surrender their LTCO identification card to the AAA within seven days. The AAA shall notify the State LTCO of the voluntary decertification with cause and shall notify the local ombudsman or assistant ombudsman of the right to a hearing. The State LTCO shall record the date of voluntary decertification in the central registry.

D. Recertification:

(1) A certified local ombudsman or assistant ombudsman who voluntarily requests decertification may apply to have his certification reinstated when he becomes reemployed or accepted as a LTCO staff or volunteer. Any person seeking recertification shall apply in writing, through the AAA, to the State LTCO. The application shall include the date of the most recent decertification action and a summary of any professional development in or experience with ombudsman skills, long-term care services, problem resolution skills or any related skills the applicant may have received since his decertification.

(2) The State LTCO shall review the application and may require the applicant to receive additional professional development, and take an appropriate examination based upon the length of time since the applicant's most recent certification,

and the experience or professional development the applicant has accumulated in the interim. The State LTCO shall make notify both the AAA and the applicant of the decision within ten working days.

R510-200-8. Operation of the Long-Term Care Ombudsman Program.

A. Intake: The local LTCO Program shall accept and screen referrals from residents, family, facility staff, agency staff and the general community. Ombudsmen and assistant ombudsmen may also serve as the complainant for situations they have personally observed.

(1) If the information indicates that the referral relates to abuse, neglect, or exploitation of a resident, the local LTCO shall refer the complaint to either the local Adult Protective Services (APS) office or local law enforcement. The local LTCO and the APS worker should collaborate on investigating and resolving the complaint whenever possible.

(2) If the information indicates that the referral relates to facilities or operations licensed or certified by the Department of Health Bureau of Medicare/Medicaid Program Certification and Resident Assessment, and the nature of the complaint is other than alleged abuse, neglect or exploitation of a resident, the LTCO shall refer the complaint to the Department of Health. The local LTCO and Department of Health staff should collaborate on investigating and resolving the complaint whenever possible.

(3) Referrals to other agencies shall be made immediately if the situation appears life threatening or, in other situations, within two working days. If a referral is made to another agency, the local LTCO shall complete the intake form, indicating the referral date and entity, and maintain the form as part of the record. The local LTCO shall follow up to see that action was taken by the referral agency.

(4) If the referral involves a resident who is under the age of 60, and the nature of the complaint is limited to impact only on that resident, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section and take no further action. If the referral involves a resident who is under the age of 60 who resides in a facility that has other residents over the age of 60 and the nature of the complaint is such that it impacts those residents, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section as applicable and initiate an investigation.

(5) If the complaint involves residents rights or other issues within the jurisdiction of the LTCO, an investigation shall be initiated to determine if the complaint is valid. Issues within the purview of the LTCO include issues of privacy, confidentiality of information, and other issues relating to the action, inaction, or decisions by providers or representatives of providers of long-term care services, public agencies, or health and human service agencies that may adversely affect the health, safety, welfare, or rights of residents.

B. Investigations:

(1) LTCO investigations shall be initiated within three working days. If the available information indicates serious threat to a resident's life, health or property, the response shall be immediate.

(2) The investigation may involve phone or in-person contacts with the resident and complainant, collateral agency or individual contacts or an on-site investigation. The local LTCO shall:

(a) do a preliminary screening to gather facts and details of the complaint;

(b) categorize the complaint, i.e. resident rights, education, abuse, neglect, technical assistance, etc.;

(c) identify all parties to the complaint;

(d) identify relevant agencies, as required by state and federal statutes;

(e) identify steps already taken by the complainant;

(f) identify information gaps that may require additional research;

(g) determine if an on-site investigation is needed. If it is determined that an on-site investigation is not necessary, the LTCO shall document the reasons in the case file;

(h) determine if the situation is an emergency; and

(i) make verbal or written follow-up with the complainant.

(3) The method and extent of the investigation depends on the circumstances reported. The local LTCO shall complete an intake form on each referral. A complaint consists of the initial referral or any additional contacts regarding the initial referral received during the period that the case is opened. A referral regarding a different matter made during the period the case is opened is considered a new complaint. A referral received after a case is closed is considered a new complaint.

(4) When an on-site investigation is determined to be necessary the local LTCO does not have to give prior notice to the agency or facility in question. The local LTCO may choose to give notice if deemed appropriate. In either case, the ombudsman shall:

(a) upon arrival at the facility or agency, present official identification to the administration or designated person in charge;

(b) identify any factors that may interfere with the investigation;

(c) start the investigatory process to establish as clearly as possible what has happened, why it has happened, who or what is responsible for resolving the complaint, and possible solutions to the problem;

(d) interview the resident, as well as other residents, staff, family, friends and physician as deemed necessary;

(e) make phone calls, on-site observation, review resident records, and make collateral contacts with other agencies and professionals; and

(f) take any other appropriate investigatory actions within the purview of the LTCO Program.

(g) During the course of the investigation, the local LTCO shall look for credible evidence which supports or refutes the complaint. Evidence may be directly observed by the LTCO or indirectly gathered from statements from reliable sources. The State LTCO shall provide consultation and technical assistance regarding the methods used in investigating complaints as requested by the local LTCO.

(h) Ombudsmen shall be provided privacy by the facility or agency during all aspects of the investigative process.

(5) Determining Validity of Complaint

(a) The local LTCO, having gathered evidence regarding the complaint, shall review the evidence to determine whether that evidence supports the allegations made in the complaint. If the local LTCO is uncertain as to whether the complaint is valid, he shall discuss the situation with his supervisor. If further consultation is necessary, contact should be made with the State LTCO, who may suggest additional activities or approaches to the problem. The local LTCO shall gather further evidence from interviews, collateral contacts, and records review, until the body of evidence enables the local LTCO to make a supportable decision regarding validity of the complaint.

(b) Upon determination of the validity of the complaint, the local LTCO shall document the determination and reasons for it in the case file.

(6) Resolution of Complaints

(a) Having determined that the complaint is valid, the local LTCO shall take appropriate steps to resolve the complaint, including:

(i) determining the scope of the problem. Does the problem affect just the residents mentioned in the complaint, or does it affect other residents?

(ii) determining what options exist to resolve the

complaint. For example, can the complaint be resolved immediately, will the resolution require negotiation with the facility management, or has the facility already moved to resolve the situation.

(iii) discussing with the resident which of the options are acceptable to resolve the complaint. Determining an acceptable resolution may require negotiation between the parties to achieve an acceptable resolution to the situation.

(iv) developing with the resident and facility a plan to achieve the agreed-upon resolution. The plan may be very simple or may have several steps and involve other agencies. Once the plan is agreed upon, the local LTCO, facility, resident, and other parties shall take action to implement the plan.

(v) making referrals to other agencies if a referrals are required by the plan.

(a) If during the investigation process the local LTCO determines that the incident or activities should be referred to APS, Health Facility Licensure, or Health Facility Review, the LTCO shall immediately make the referral and involve all appropriate agencies.

(b) The local LTCO who has referred the complaint to another agency shall follow up to obtain final results and record the outcome of the other agency's investigation. If the other agency does not respond or if the response is inadequate, the local LTCO may:

(1) contact the agency; or

(2) contact the State LTCO for technical assistance or help in resolving the problem with the other agency; or

(3) collaborate with another advocacy agency, such as the Legal Center for People with Disabilities, the Senior Citizens Law Center, or the local office of Utah Legal Services to resolve the issue and clarify substantive legal rights of elderly residents; or

(4) track on-going problems with an agency or facility to build a body of credible evidence on which to base further action; or

(5) take any other appropriate action within the LTCO scope of authority, including filing legal action against the other agency if the AAA has the legal resources to bring legal action.

(6) compiling documentation of the validity of the complaint, of the agreed-upon outcome, and the steps taken to carry out the plan. The documentation may be summary in nature, but should clearly indicate the situation and its resolution.

(7) determining at what point the case is appropriately closed.

(8) notifying the complainant, verbally or in writing, that the investigation has been completed and the case is closed.

(7) Records

(a) The local LTCO shall maintain a set of records by resident, containing all required forms and relevant documentation, including:

(i) a completed intake form;

(ii) case recording consisting of: the nature of the complaint; validity of complaint and reasons for the determination; plan for resolution; implementation and outcome of plan; and dates and names of any collateral contacts.

(iii) consent forms; and

(iv) copies of any correspondence or written documents pertaining to the complaint, the investigation, the resolution plan, or implementation of the resolution plan.

(b) The local LTCO shall also maintain information by facility relating to all referrals.

(c) All actions, findings, conclusions, recommendations and follow-up shall be documented on the required state forms.

(8) Consent Forms

(a) In order to access resident files maintained in a facility, the local LTCO must attempt to obtain a signed release from the resident or the resident's legal representative. Signed releases shall be maintained in the case file and a copy shall be given to the facility or agency for inclusion in the residents record.

(b) If the local LTCO is unable to obtain written permission, he may get verbal approval from the resident or the resident's legal representative. The date and method of obtaining the verbal approval, e.g. phone contact with guardian, shall be documented in the case file. LTCO shall attempt to have a third-party witness the verbal consent and document it in the record.

(c) If a request for written or verbal consent is denied by the resident or their legal representative, the local LTCO shall not access the records.

(d) If the request for written or verbal consent is unsuccessful for any reason other than specific denial by the resident or legal representative, the local LTCO may proceed to access the records. The reasons for not obtaining consent shall be documented in the case file.

(9) Access to LTCO Records

(a) Records maintained by the local LTCO shall be available to the LTCO, their supervisor, the LTCO Program Director, the State LTCO, and any duly authorized agent of the AAA or the Division with program oversight responsibility. No other staff shall have access to these records.

(b) Residents have the right to read their LTCO records; however, the name of any complainants shall be withheld.

(c) LTCO records shall be released to other persons if the resident provides written consent. The consent form must be filed in the resident's file.

(d) State and federal auditors may have access to LTCO records as required for administration of the program.

(d) Statistical information and other data regarding the LTCO program which does not identify specific residents or complainants is available for public dissemination.

(10) Reporting Requirements to State LTCO

Local LTCO programs shall report to the State LTCO on the operation of the LTCO program. Reports shall include the data required to complete the State's report to the U.S. Department of Health and Human Services, Administration on Aging. Reports shall be submitted within time frames and in a format which shall be mutually agreed upon by the Division and AAAs.

(11) Legal Issues

(a) Legal representation: The Division is responsible for assuring that adequate legal representation is available for local LTCO Programs. AAAs and their governing authorities shall have the option to provide legal representation for their local LTCO Program. If an AAA, through their governing authority, opts not to provide this representation, the Division shall arrange for the representation through the attorney general or through contract. All AAA requests for legal consultation or representation shall be directed to the State LTCO for action. The Division is responsible to assure that no conflict of interest is present in the provision of legal representation to local LTCO Programs.

(b) Liability: The local LTCO must operate within the scope of the ombudsman job description and this policy. Actions such as transporting a client, acting as a guardian or payee, signing consent forms for survey, medication, restraints, etc., signing medical directives, receiving a client power of attorney, and similar actions are outside the scope of the LTCO responsibilities. In doubtful situations the ombudsman should consult with supervisors, legal counsel or the State LTCO.

(c) Guardianship:If a resident has a legal guardian, the local LTCO must work with the guardian. If the local LTCO identifies problems in the guardianship, they will discuss the situation with the local adult protective services staff to determine the advisability of investigating for abuse, neglect, or exploitation. They may also consult legal counsel or present issues to the court which oversees the guardianship.

(12) Volunteers

Local LTCO programs which use volunteers shall follow AAA policy with respect to applications, screening and approval, reference checks, personnel records, reimbursement, supervision, liability and all other relevant aspects of the volunteer program. In addition, volunteers must meet specific training and certification requirements contained in these rules if they are serving in the capacity of local ombudsman or assistant ombudsman.

(13) Public Education

In addition to receiving and investigating complaints, local LTCO Programs are mandated by federal and state statute to provide public education regarding long-term care issues. This may include activities such as frequent presence in facilities, community advocacy, attendance at family or resident councils, technical assistance and in service to long-term care facilities, community organizations, and public information presentations.

R510-200-9. Determination of the Responsible Agency for Investigating Particular Cases in Long-Term Care Facilities.

A. Pursuant to Utah Code Section 62A-3-106.5, to avoid duplication in responding to a report of alleged abuse, neglect, or financial exploitation in a long-term care facility, the Division hereby establishes procedures to determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case and determine whether, and under what circumstances, the agency that is not the responsible agency will provide assistance to the responsible agency in a particular case.

B. The Long-Term Care Ombudsman Program will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of an elderly adult who resides in a long-term care facility in the following cases:

(1) When an allegation of abuse, neglect or exploitation occurs, the Long-Term Care Ombudsman will be the responsible agency in cases other than cases that allege sexual abuse or sexual exploitation;

(2) When an elderly resident of a long-term care facility has allegedly abused, neglected, or financially exploited another resident;

(3) When an employee of a long-term care facility has allegedly abused, neglected, or financially exploited an elderly resident and the facility has terminated the employee;

(4) When the police or local law enforcement have initiated an investigation of alleged abuse, neglect, or financial exploitation.

C. Adult Protective Services will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility in the following cases:

(1) When an allegation of sexual abuse or sexual exploitation of a vulnerable adult is received.

D. The agency that is not the responsible agency will provide assistance to the responsible agency in the following circumstances:

(1) When the responsible agency requests the assistance of the non-responsible agency; or

(2) When the responsible agency is the LTCO and there is evidence that the resident's protective need has not been met.

KEY: elderly, ombudsman, LTCO

October 23, 2006 62A-3-201 to 8

Notice of Continuation June 30, 2017 62A-3-104

R510. Human Services, Aging and Adult Services.
R510-302. Adult Protective Services.
R510-302-1. Purpose.

This rule clarifies the responsibilities of Adult Protective Services.

R510-302-2. Authority.

This rule is authorized by Section 62A-3-302.

R510-302-3. Principles.

(1) Adult Protective Services shall respect the lifestyle that is knowingly and voluntarily chosen by the vulnerable adult.

(2) A vulnerable adult with capacity to consent has the right to self-determination.

(3) All services provided are voluntary unless court ordered.

(4) All services provided should be the least restrictive possible.

(5) All services provided shall be community-based unless community-based services are unavailable.

(6) Adult Protective Services shall encourage a vulnerable adult's family and community to take responsibility for providing necessary services.

(7) Adult Protective Services shall coordinate and cooperate with other agencies to protect vulnerable adults.

(8) Adult Protective Services shall treat vulnerable adults and others in a courteous, dignified and professional manner.

R510-302-4. Definitions.

(1) All definitions found in Title 62A Chapter 3 are incorporated by reference.

(2) Activities of Daily Living means the ability to: take a full body bath or shower, including transfer in and out of the bath or shower; tend to personal hygiene needs, including care of teeth, dentures, shaving, and hair care; put on, fasten and take off all clothing, and select appropriate attire; walk without supervision or cues, including using a walker or cane; use steps or ramps; use toilet or commode, including transferring on and off toilet, cleansing self, changing pads, and caring for colostomy or catheter in appropriate manner; transfer without supervision or devices in and out of a bed or chair; and the ability to feed oneself, prepare food, drinkor use necessary adaptive devices.

(2a) Instrumental Activities of Daily Living (ADL's) means the core life activities of independent living, including using the telephone, managing money, preparing meals, doing housework, remembering to take medications, providing for one's necessities, and obtaining services.

(3) Conservator means an individual or agency appointed by a court in accordance with Section 75-5-401, et seq.

(4) Guardian means an individual or agency appointed by a court in accordance with Section 75-5-303, et seq.

(5) Incapacitated Person is as defined in Section 75-1-201(18).

(6) Intentionally is as defined in Section 76-2-103(1).

(7) Knowingly is as defined in Section 76-2-103(2).

(8) Lifestyle Choice means a knowing and voluntary choice to live a certain way, including a non-conventional way, by a person who has capacity to make that choice.

(9) Limited Capacity means that an adult person's ability to understand, communicate, make decisions regarding the nature and consequences the person's life or property is limited in one or more, but not all, functional areas, or during identified times of day, due to a mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause.

(10) Long-term care facility is as defined in Section 62A-3-202.

(11) Protective intervention funding means payments made to the vulnerable adult, family, or caregiver or other provider that will alleviate or resolve a protective need.

(12) Protective Needs means factors identified by the APS Protective Needs Assessment that pose significant risk for, or are the result of Abuse, Neglect or Exploitation of a vulnerable adult.

(13) Protective Needs Assessment means an assessment of a vulnerable adult's impairments and alleged risk factors for Abuse, Neglect or Exploitation that are found to be present in that APS case investigation.

(14) Protective Supervision means an APS service offered to reduce or resolve a vulnerable adult's protective need.

(15) Recklessly is as defined in Section 76-2-103(3).

(16) Respite Care means a time-limited period of relief from care giving responsibilities paid to a respite care provider or individual from Protective Intervention Funds.

(17) Service Plan means a document created by the APS caseworker for an approved Short-term Service Case that includes a goal, objectives, methods, and progress reviews to resolve the protective needs identified in an Adult Protective Services investigation, and which implements recommendations of the case review committee.

(18) Short-term protective services include but are not limited to crisis intervention, emergency shelter, protective supervision, respite care, supported living services, or short-term intervention funding.

(19) Short-Term intervention funding means short-term payments made to the vulnerable adult, family, or caregiver or other provider, during a short-term service case for goods or services other than for Respite Care or Supported Living, that will alleviate or resolve a protective need.

(20) Supported Living means short-term payments made to individuals or providers that enable the vulnerable adult to remain in his or her own home or in the home of a relative.

R510-302-6. Adult Protective Services Intake.

(1) Referrals may be submitted to the APS Intake Office in any format from any person who has reason to believe that a vulnerable adult has been abused, neglected, or exploited in the State of Utah.

(2) All referrals shall be evaluated by APS Intake to determine whether APS shall investigate the allegation.

(3) APS shall accept all referrals with allegations of abuse, neglect, or exploitation of a vulnerable adult in the State of Utah except as follows:

(a) when the referral does not involve an allegation that a vulnerable adult may have been or is being abused, neglected or exploited.

(b) when the referral does not identify a current abuse, neglect or exploitation but anticipates that abuse, neglect or exploitation may occur.

(c) when the referral involves a vulnerable adult on an Indian reservation, a written agreement between APS and tribal authorities granting APS authority to investigate must be in effect or the referral shall be forwarded by Intake to federal or tribal authorities.

(4) APS shall notify the Department of Health and the Local Long-term Care Ombudsman when a referral involves a long-term care facility.

(5) APS may submit a referral that involves a Division employee or other potential conflict of interest to the DHS Office of Services Review for review.

R510-302-7. Investigation.

(1) The assigned investigator shall initiate the investigation and determine whether:

(a) there is an allegation of abuse, neglect or exploitation;

(b) the alleged victim is a vulnerable adult;

(c) the alleged victim has the capacity to consent;
(d) the alleged victim has a legal guardian or conservator;
(e) an emergency exists; and
(f) the extent of the alleged victim's mental or physical impairment.

(2) The investigator shall make a face-to-face visit with the alleged victim.

(a) The investigator shall seek the consent of the vulnerable adult to provide services if the vulnerable adult has the capacity to consent.

(b) The investigator shall seek the consent of the vulnerable adult's legal guardian to provide services if the vulnerable adult does not have the capacity to consent.

(3) The investigator may not enter the home of a vulnerable adult unless the vulnerable adult, legal guardian, or caretaker consents, except when the investigator has reason to believe exigent circumstances exist to protect the vulnerable adult from imminent harm.

(4) The investigator shall interview the alleged perpetrator unless:

(a) specifically requested not to do so by law enforcement officers in order to avoid impeding an ongoing criminal investigation or proceeding;
(b) interviewing the alleged perpetrator would likely endanger any person;
(c) prior to interviewing the alleged perpetrator, the allegation is found to be without merit;
(d) APS is unable to locate the victim;
(e) the alleged victim died before the investigation started;
(f) the alleged perpetrator is unknown; or
(g) the alleged perpetrator has refused the interview.

(5) When the investigator has reason to believe any hazardous waste or illegal drugs may be located at an investigative site, the investigator will contact law enforcement agencies and not enter the site until the local health department determines it is safe to do so. The law enforcement agencies may be asked:

(a) to assess and secure a vulnerable adult's immediate safety,
(b) facilitate the vulnerable adult's exit from the lab site,
(c) and arrange for emergency transportation to the hospital for decontamination.

(6) The investigator may obtain an administrative subpoena when the following circumstances apply:

(a) the vulnerable adult lacks the capacity to consent; or
(b) the vulnerable adult's legal guardian refuses to consent; or
(c) the custodian of the records or items pertinent to an investigation refuses to allow access to those records or items without a subpoena; or
(d) the information sought is necessary to investigate allegations of abuse, neglect or exploitation or to protect the alleged victim.

(7) An administrative subpoena form:

(a) shall include a list that specifically identifies the documents or objects being subpoenaed;
(b) is not valid until signed by the Director or Regional Director.

(8) The investigator shall document all items received as a result of the subpoena.

(9) the investigator shall evaluate all information obtained during the investigation and determine:

(a) whether each allegation of abuse, neglect and exploitation identified during the investigation is supported, inconclusive, or without merit; and
(c) law enforcement shall be contacted to coordinate or assist on an investigation, if the investigation indicates that criminal abuse, neglect or exploitation may have occurred or the safety of the any person is endangered.
(d) if an unmet (protective) need exists:
(i) the investigator may refer the vulnerable adult and the vulnerable adult's legal guardian to available community resources and services to resolve the protective need;
(ii) the investigator or Supervisor may request a review by the Case Review Committee to determine if Short-Term Services may help to resolve the protective need;
(iii) the investigator may make a referral to the Office od Public Guardian;
(iv) the investigator may provide crisis intervention to assist the vulnerable adult in obtaining services or benefits as it relates to the abuse, neglect or exploitation;
(v) the investigator may contact the family of a vulnerable adult who lacks capacity and inform the family that the vulnerable adult requires alternate living arrangements in an environment that is safe and meets the vulnerable adult's protective needs;
(vi) the investigator may provide Protective Intervention Funds at the sole discretion of APS. These funds may be made available to the vulnerable adult, family caregiver or other provider to alleviate or resolve a protective need, and must directly benefit the vulnerable adult;
(vii) the investigator may provide one-time payments for medications, medical treatment, or medical equipment or supplies not covered by insurance or other medical coverage; transportation; minor repairs or modifications; rent; food; or clothing, or other needs that directly benefit the vulnerable adult to alleviate or resolve a protective need; or
(viii) the investigator may provide payments for a service provider or individual for approved Short-term services for Respite care, Supported living, or for short-term intervention funds.

R510-302-8 Settlement Agreements.

(1) The Division may enter into a settlement agreement with the person who has received a notification of agency action letter pursuant to 62A-3-311.5.

(2) No settlement agreement shall be enter into once the Supported finding has been upheld by a court of competent jurisdiction.

R510-302-9. Eligibility.

(1) There are no income eligibility requirements for an APS investigation of allegations of abuse, neglect, or exploitation.

(2) There are no eligibility requirements in order to receive short-term protective supervision services.

(3) There are no eligibility requirements in order to receive Protective Intervention Funds to resolve a situational crisis or an immediate protective need.

(4) A vulnerable adult shall meet income eligibility requirements in order to receive short-term protective services other than protective supervision services, including respite care, supported living, short-term intervention funding, and other services approved by the APS Director or regional director.

(a) For purposes of eligibility for short-term protective services, "family" includes an adult, the adult's spouse, and their natural children under age 18, who are residing in the same household.
(b) A person living under the care of someone other than their spouse is considered a one-person family.
(c) In determining whether a vulnerable adult meets income eligibility requirements for short-term protective services, family assets shall be disclosed and evaluated.
(i) Family assets include the fair market value of stocks, bonds, certificates of deposit, notes, savings and checking accounts, inheritance, capital gains, or gifts, which can be readily converted to cash.

(ii) A client's income and deductions will be used to determine the client's adjusted gross income to determine the client's eligibility status.

(iii) Monthly gross income includes the total monthly income received by an individual from earnings, military pay, commissions, tips, piece-rate payments, and cash bonuses; net income from self-employment; Social Security Pensions, SSI, Survivor's Benefits, and Permanent Disability Insurance payments; dividends, interest, income from estates or trusts, net rental income or royalties, net income from rental of property, receipts from boarders or lodgers; pensions, annuities; unemployment compensation; strike benefits; worker's compensation; alimony, child support, money received as specified in a divorce or support decree; Veterans' pensions or subsistence allowances; and other regular (three out of six months) financial assistance.

(iv) Monthly gross income does not include per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims; net proceeds received from the sale of a primary residence or an automobile; money borrowed; insurance payments in excess of incurred costs that must be paid from the settlement; the value of the coupon allotment under the Food Stamp Act; the value of USDA donated foods; the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act; any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; earnings of a child (under 18 years of age) residing in the home; payments for energy assistance and weatherization HEAT program; housing subsidies paid by the Federal government; payments or grants received due to natural disaster; educational loans, grants, or scholarships to any undergraduate student for educational purposes that is made or insured by the U.S. Commissioner of Education (BEOG; SEOG; NDSL; Guaranteed Student Loans; SSIG; and PELL Grants); payments to participate in a service learning program, such as College Work-Study or University Year for Action; and that portion of any other loan, grant, or scholarship which is conditioned upon school attendance, actually used for tuition, books, fees, equipment, special clothing needs, transportation to and from the school, and the child care services necessary for school attendance.

(v) The expenses that shall be deducted in determining adjusted gross income are limited to medical expenses (including Medicaid spend-down and insurance); storage expenses; child support paid, including money paid for house payments, rent, etc. as specified in a divorce or support decree; the dollar amount of first mortgage/rental payment over 25% of monthly countable income (not counted for Foster Care); and fees paid for other programs and protective services.

(vi) The sum of all family assets shall be divided by the number of family members, and if that amount exceeds $4,000 per family member, then the value over $4,000 shall be prorated over twelve months, and the resulting amount shall be added to the monthly countable income.

(vii) Eligibility status must be verified annually and within 30 days of any family member's increase in assets.

(viii) A client's adjusted gross income for income tax purposes is not the same as the adjusted gross income for service eligibility purposes.

(ix) All family assets and expenses shall be supported with current bank records, check stubs, and other verifiable records. Documentation must clearly indicate the name of the applicable family member.

R510-302-10. Protective Need Intervention.

(1) An Investigator may request Protective Intervention Funding for an emergency shelter placement to alleviate the vulnerable adult's protective need. Emergency shelter placements may be made for up to 30 days within a twelve-month period for a vulnerable adult who has been abused, neglected, or exploited only if:

(a) the vulnerable adult's circumstances require immediate alternate living arrangements in a safe environment;

(b) the vulnerable adult or legal guardian consents to the emergency shelter placement or a court order authorizes the placement;

(c) the vulnerable adult does not meet the eligibility requirements for shelter under the Family Violence program; and

(d) the emergency shelter has all required current licenses and certifications.

R510-302-11. Short-Term Intervention.

(1) Short-term protective services may only be provided to a vulnerable adult who is the victim of abuse, neglect or exploitation, and in accordance with the terms of a service plan consented to and signed by the vulnerable adult or the vulnerable adult's legal guardian, or pursuant to a court order. An updated service plan shall be signed at each case review.

(2) A short-term services Case Review Committee shall monitor and review short-term services. The Case Review Committee:

(a) shall consist of the primary worker, supervisor or designee, and two other region workers. The Committee may include other APS and community or agency individuals when determined necessary by the Case Review Committee.

(b) shall oversee the progress made towards resolution of the protective need.

(c) may recommend that short-term services are initiated, extended, or terminated.

(d) may recommend community referrals or alternative actions.

(3) The Case Supervisor may approve or deny Short-Term Services recommended by the Case Review Committee.

(4) Short-Term Services may only be provided under the following conditions:

(a) Short-term services are voluntary and shall not be implemented without the written consent of the vulnerable adult or the vulnerable adult's legal representative.

(b) Every short-term service case shall include a protective supervision service.

(c) Protective Intervention funds for Short-term services shall not be disbursed without the approval of the APS supervisor or regional director.

(d) Respite Care funds may not be used for caring for other members of the family, performing extensive household tasks, or transportation.

(e) Respite Care may be provided in the vulnerable adult's home, a caregiver's home, or in a licensed facility.

(f) Supported Living Payments may be made to providers to enable the vulnerable adult to remain in his own home or in the home of a relative, and may include short-term supervision, transportation, assistance with shopping, training or assistance with activities of daily living.

(g) Payments for Short-Term Services may not be made until a case has been approved by the Case Review Committee and Services voluntarily agreed to in writing by the vulnerable adult, his or her guardian, or approved by court order.

R510-302-12. Protective Payee Services.

(1) Adult Protective Services shall not provide payee services.

R510-302-13. Termination of Short-Term Protective Services.

(1) A vulnerable adult has no entitlement or right to short-

term protective services from APS.

(2) Protective Services may be terminated by the vulnerable adult or APS at any time.

(3) Protective Services shall be terminated when:

(a) the vulnerable adult is no longer in immediate danger of abuse, neglect or exploitation;

(b) a vulnerable adult who voluntarily accepted services requests that those services be terminated;

(c) recommended by the Case Review Committee;

(d) the court terminates an order requiring APS to provide services;

(e) the vulnerable adult is receiving protective services from other persons or agencies;

(f) the vulnerable adult's behavior is abusive or violent and constitutes a threat;

(g) the vulnerable adult no longer meets the eligibility requirements for services;

(h) the vulnerable adult refuses to comply with the service plan;

(i) there is insufficient funding to pay for the service;

(j) the vulnerable adult moves out of State; or

(k) the vulnerable adult dies. APS shall complete a Deceased Client Report form in accordance with DHS policy 05-02.

(4) When APS terminates Short-Term protective services, a letter shall be sent to the vulnerable adult stating the case is going to be terminated and the reason for termination.

(a) The letter shall state that termination becomes effective 10 days from the date the letter was sent unless the vulnerable adult requests an administrative review of the reason for the termination and to decide if the services should be reinstated or alternative services may be available.

KEY: vulnerable adults, adult protective services investigation, shelter care facilities, short-term services
December 21, 2012 62A-3-301 et seq.
Notice of Continuation June 30, 2017

R510. Human Services, Aging and Adult Services.
R510-400. Home and Community Based Alternatives Program.
R510-400-1. Purpose.

(1) The Home and Community Based Alternatives program provides a comprehensive array of quality, client centered services. The services are delivered in a variety of community settings designed to provide a choice of service delivery options to the eligible client who can continue to live in their own home, if their needs for social and medical services can be met. Home and Community Based Alternatives services contribute to improving the quality of life and help to preserve the independence and dignity of the recipient. This rule is intended to clarify the obligations and options available to administrators of the program and to ensure compliance with state and federal regulations.

(2) The objective of the Older Americans Act Title IIIB Services is to provide services to frail older clients, including the older client who is a victim of Alzheimer disease and related disorders with neurological and organic brain dysfunction, and to their family.

R510-400-2. Authority.

(1) The Division of Aging and Adult Services is given rulemaking authority by Section 62A-3-104. The Home and Community Based Alternatives program is provided by the Older Americans Act Title IIIB. The Utah State Department of Human Services is the umbrella agency with oversight responsibility provided by the Division of Aging and Adult Services (DAAS). The Home and Community Based Alternatives program is funded from several sources and administered by the Division of Aging and Adult Services.

R510-400-3. Definitions.

(1) Adult means an individual who is 18 years of age or older.

(2) Aging and Aged means an individual who is 60 years of age or older.

(3) Agency means the designated Area Agency on Aging or other sub-contracting agency which may be selected by the Division, if the designated Area Agency on Aging declines to be a contractor or has been determined to be out of compliance with the contract.

(4) Assessment means a complete review of an individual's current strengths and deficits, living environment, social resources and care giving needs.

(5) Assessment Instrument means a document that meets minimum assessment criteria, as approved by DAAS, for documenting the needs of individuals.

(6) Caregiver means an individual who has the primary responsibility of providing care and/or supervision to an adult, three or more times a week.

(7) Care Plan means a written plan which contains a description of the needs of the client, the services necessary to meet those needs, the provider of those services, the funding source, and the goals to be achieved.

(8) Case Management means assessment, reassessment, determination of eligibility, development of a care plan, on-going documentation, arranging client specific services, case recording, client monitoring and follow-up.

(9) Chore Services consists of heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy furniture.

(10) Department means the Utah State Department of Human Services.

(11) Director means the Director of the Agency.

(12) Division means the Utah State Division of Aging and Adult Services.

(13) Emergency means that a vulnerable adult is at risk of death or immediate and serious harm to self or others. Section 62A-3-301(6) through (12).

(14) Equipment, Rent or Purchase means rental or purchase of equipment deemed necessary for the client's care.

(15) Home means an individual's place of residence.

(16) Home Health Aid means basic assistance and health maintenance by an Aide to individuals in a home setting under the direction of appropriate health professionals.

(17) Homemaker Services mean services which provide assistance in maintaining the client's home environment and home management. This includes, but is not limited to, assistance with vacuuming, laundry, dish washing, dusting, cleaning bathroom, changing bed linen (unoccupied bed), cleaning stove and refrigerator, ironing, and garbage disposal; which relate to the client's well being.

(18) Home and Community Based Alternatives Services means a comprehensive array of services that are provided to an individual which enable him to increase self-sufficiency and to maintain their functional independence.

(19) Protective Services means services provided by the Division, including the services of guardian and conservator provided in accordance with Title 75, Utah Uniform Probate Code, to assist persons in need of protection to prevent or discontinue abuse, neglect, or exploitation until that condition no longer requires intervention. The services shall be consistent, if at all possible, with the accustomed lifestyle of the vulnerable adult as provided by Section 62A-3-301(12).

(20) Personal Attendant Services are defined as personal and non-medical supportive services specific to the needs of a medically stable adult experiencing chronic physical or cognitive functional impairments who is capable of directing their own care or who has a surrogate available to direct the care.

(21) Personal Care means assistance with activities of daily living in a home setting to an individual who is unable to perform activities of daily living independently or when the care giver is temporarily absent or requires respite.

(22) Respite means a rest or relief for the primary Caregiver from care giving tasks and responsibilities, to maintain the Caregiver as the primary person delivering care-giving activities.

(23) Risk Score means a score that reflects the amount of risk an individual has of premature institutionalization. Risk score is determined using a DAAS approved assessment instrument that reflects a moderate to high risk of functional, environmental, social resource and care giving needs of an individual.

(24) Screening Tool means an instrument that initially determines the client's level of functioning to determine the need for long-term Home and Community Based Services.

(25) Vulnerable Adult means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:

(a) Provide personal protection;

(b) Provide necessities such as food, shelter, clothing, or mental or other health care;

(c) Obtain services necessary for health, safety, or welfare;

(d) Carry out the activities of daily living;

(e) Manage the adult's own resources; or

(f) Comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation. Section 62A-3-301(26).

R510-400-4. Funding Sources.

(1) The Home and Community Based Alternatives program is funded by a variety of Federal, State and local community dollars, program fees, voluntary and public contributions.

(2) The Older Americans Act Title IIIB Services Programs

are funded by Federal dollars allocated by Congress, State matching funds, local matching funds and voluntary contributions.

(3) PROCEDURES-Funding Limitations:

(a) Within each Agency at least 75% of the program funding shall be used to serve clients aged 60 or older.

(b) The Division shall establish the program expenditure limit per client, prior to July 1 of each year.

(c) At the discretion of the Director or designee, waivers of the expenditure limit can be approved using the Expenditure Limit Waiver Process outlined below.

(4) PROCEDURES-Expenditure Limit Waiver Process:

(a) Waivers of the allowed expenditure limit may be granted on an individual basis.

(b) Requests for a waiver must be in writing and approved by the Agency Director or their designee.

(c) Waiver requests, documentation, and accompanying approval or denial must be maintained in the Client's file.

(d) The waiver must be re-approved with each Eligibility Declaration determination.

R510-400-5. Eligibility.

(1) Services may be provided as funds permit to eligible adults as determined by DAAS Policy and Procedures for Home and Community Based Alternatives services.

(2) Older Americans Act Title IIIB Services may be provided to eligible Aging and Aged Adults.

(3) PROCEDURES-Home and Community Based Alternatives Program Eligibility:

(a) The DAAS Eligibility Declaration form shall be used to determine financial eligibility.

(b) Eligibility is determined by the Agency using the following criteria:

(i) Age: Clients must meet the definition of an Adult.

(ii) Income and Assets:

(A) Income and asset guidelines shall be established by the Division prior to July 1 of each year and shall remain in effect until suspended.

(B) The Client's and their spouse's income and assets will be considered in determining eligibility using the DAAS Eligibility Declaration form.

(iii) Frailty level:

(A) The Client's Assessment Risk Score must be at a moderate to high level as measured by a DAAS approved assessment instrument.

(iv) Payer of last resort:

(A) Payer of last resort is the term used to denote that the Alternatives program is liable for payment for care and services only after all other liable third parties have met their legal obligation to pay.

(4) PROCEDURES-Older American Act Titles IIIB Services Program eligibility:

(a) Clients are determined eligible based on age and need. Income and Assets will not be used as a basis for providing services under Older Americans Act Service Programs.

(b) Eligibility is determined by the Agency using the following criteria:

(i) Age: Clients must be 60 years of age or older.

(ii) Need Criterion: The Client must have an Assessment Risk Score at a moderate to high level as measured by a DAAS approved assessment instrument.

R510-400-6. Authorized Services.

(1) The Agency may provide or arrange for an array of Home and Community Based Alternatives services, determined by assessment to be essential to maintain the individual's independence in order for him to remain in the home.

(2) PROCEDURES-Authorized Services:

(a) The Home and Community Based Alternatives services program may also provide an additional array of services based upon client need and which program funding permits that allows clients to remain in their own home. These services include case management and other services such as homemaker, personal care, home health, skilled health care, respite, equipment rental or purchase, emergency response systems or other services as needed. Case Managers, in providing case management and other services as appropriate, are encouraged to use innovation to efficiently and effectively meet client needs.

(b) Older Americans Act Title IIIB Program Services shall be provided as specified in the Older Americans Act 1965 as amended (Sections 306(a)(2)).

R510-400-7. Fees and Voluntary Contributions.

(1) Fees shall be assessed for all clients receiving Home and Community Based Alternatives services. Fees are based on the client's and spouse's adjusted income as determined by the DAAS Eligibility Declaration form and calculated against the Department's Fee Schedule.

(2) Older Americans Act Title IIIB Program participants shall not be assessed fees for receiving Older Americans Act Title IIIB funded services. Clients receiving Title IIIB services shall be given the opportunity to make a confidential donation to the program.

(3) PROCEDURES-Fees:

(a) The Agency shall establish procedures for fee collection. Every reasonable effort shall be made to collect the required fee. Services may be terminated for refusal to pay the required service program fee.

(b) Clients whose income and/or assets are above the maximum eligibility guideline, may purchase Home and Community Based Alternative services at cost.

(c) Waivers for full or partial fees may be granted on an individual basis using the following process:

(i) Case Managers will document the circumstances which necessitate a waiver of the fees.

(ii) The request must be made in writing.

(iii) The Agency Director or their designee must approve the waiver.

(iv) The documentation must be maintained in the Client's files at all times.

(v) All fee waivers must be re-approved with each new request by the Case Manager or on an annual basis.

(A) Clients shall be informed as to the cost of the services they receive under the Home and Community Based Alternatives program and Older American Act Title IIIB Program.

(4) PROCEDURES-Voluntary Contributions:

(a) Each client and family shall be given the opportunity to voluntarily contribute toward the cost of the service program.

R510-400-8. Service Provider Requirements.

(1) Home and Community Based Alternatives Services shall be provided through a public agency, a private licensed Service Provider Agency with at least one year experience in providing home support or home health services, or by an individual providing personal attendant services with demonstrated skills and abilities in providing the required services. The one-year experience requirement may be waived by the AAA Director or designee provided there is adequate documented justification.

(2) PROCEDURES-Service Provider Requirements:

(a) The service provider may be a public or private social service or health care agency.

(b) The agency must have one year of experience in providing in-home services.

(c) The service provider must be appropriately licensed.

(d) The service provider must maintain liability insurance and bonding of all employees.

(e) It is the responsibility of the service provider to:
(i) provide all employees with written instructions based upon the client's Care Plan;
(ii) instruct employees as needed in performing the required tasks
(iii) provide supervision of employees
(iv) inform employees regarding personal liability.
(3) PROCEDURES-Case Load Requirements:
(a) A Case Manager shall be assigned for each Client. Average case load size across all programs the case manager may work shall not exceed fifty (50) clients per available Full Time Equivalent and should be proportionate to the Agency's Case Managers time, case mix, and situation. Exceptions may be made only upon written request to the Division. The Division will review the request and if appropriate, approve a temporary waiver.
(b) Case Manager Qualifications:
(i) Case Management shall be performed by a person with a Bachelor Degree in a social science, health science, or other related field. Exceptions to this requirement may be made for individuals who have year for year experience in these fields, or substitutions on a year for year basis as follows:
(A) additional related education for the experience,
(B) additional full time paid related employment for the education.
(ii) State licensure as a Social Service Worker is recommended as a minimal qualification.
(4) Personal Attendant Services:
(a) Where appropriate, agencies and clients can make use of a Personal Attendant to provide services to clients. Personal Attendant Services are defined as: Personal care and non-medical supportive services, specific to the needs of a medically stable elderly person experiencing chronic physical or cognitive functional impairments, who is capable of directing their own care or who has a surrogate available to direct the care.
(5) Eligibility:
(a) To be eligible for the Personal Attendant Service the individual must be an active consumer on the Home and Community Based Alternatives Program.
(b) The client and their designated Personal Attendant must:
(i) Understand that Personal Attendant services is a service delivery model designed to benefit the designated client.
(ii) Be able to provide management of the employee (personal attendant) to include recruitment, scheduling, discipline and termination, if needed, of individuals eighteen (18) or more years of age.
(iii) Be willing and capable of training and directing the employee.
(iv) Follow-up with the employee regarding First Aid training/certification and provide documentation of such to the Case Manager.
(v) Personal attendant service is available to those clients for whom eligibility has been established and who have an established care plan. Preferably, the client has been receiving services from the Home and Community Based Alternatives program.
(vi) Receive, sign and copy all employee time sheets and submit them to the designated organization by the established deadline. The consumer or the personal representative will be responsible for the verification and accuracy of hours billed by the employee, not to exceed the agreed upon and approved hours on the care plan.
(vii) Complete, maintain and file with the payroll agent all necessary tax information required by the U.S. Internal Revenue Service.
(viii) Demonstrate the skills necessary to supervise direct service employees.
(ix) Provide training to their employee(s) in the areas of confidentiality and services to be provided related to the individual's plan of care. If additional training is needed, the consumer or personal representative will request this from their Case Manager.
(x) Actively participate with the Case Manager in the monitoring and revision of the consumer Care Plan.
(xi) Provide a back-up service plan to the Case Manager that states clearly the manner in which services will be provided as a back-up when the employee is not able to provide services. Back-up services may be provided by individuals who are not employees and who will not be eligible for payment for services provided.
(xii) Develop and maintain in the home of the consumer a notebook that includes a copy of:
(A) The current Care Plan;
(B) The Employee Agreement;
(C) The Consumer/Personal representative Letter of Agreement;
(D) All payroll agent's forms and time sheets;
(E) The Back-up Plan; and
(F) The Training Plan, as needed.
(xiii) Provide periodic feedback to the Case Manager regarding the quality of service being provided by the employee and how effectively the service meets the needs identified in the Care Plan. The consumer or personal representative will report immediately to the Case Manager any abuse or exploitation of the consumer by the employee.
(xiv) Notify the Case Manager when consumer needs change in order to adjust the Care Plan as appropriate.
(xv) Obtain prior authorization for services from the Case Manager.
(xvi) Follow applicable sections of the Home and Community Based Alternatives Program policies and procedures as provided by the Case Manager.
(xvii) Furnish requested copies of all documents related to employment or services that are collected by the consumer and/or the personal representative to the Case Manager and/or payroll agent.
(xviii) Report issues of non-compliance, consumer or personal representative and employee(s) conflict, and/or other significant occurrences to the Case Manager.

R510-400-9. Client Assessment.
(1) The initiation of a DAAS approved Screening Assessment to establish a risk score shall be ten working days or less from the initial referral. Enough information shall be gathered with the client, family or referral source to determine potential eligibility and whether they shall be referred for an Assessment or referred to another agency or community resource.
(2) PROCEDURES-Assessment:
The DAAS approved Assessment shall be completed by the Case Manager to confirm and identify the need for services(s).
(a) Nursing Assessment: An additional assessment or file review by a Registered Nurse may be completed to identify the appropriate level of intervention necessary.
(b) Reassessment: Annually, the Case Manager will complete the areas indicated in the DAAS approved Assessment Instrument for reassessment of the client's service need(s) during the same calendar month as the original assessment whenever possible.
(c) PROCEDURES-Family and Other Support System Involvement:
(i) The client's family and/or personal support systems shall be encouraged to participate in the Assessment unless the client and case manager determine that they not be included or it is the client's request that they not be included.

R510-400-10. Care Planning.

(1) The client Care Plan shall be developed based upon their current situation and needs as identified in the DAAS approved Assessment.

(2) PROCEDURES-Care Planning:

(a) A standardized Care Plan form designated by the Division shall be used.

(b) The Care Plan will be developed with the client's input.

(c) The Care Plan shall include methods, services to be provided, amount and frequency of services being authorized, together with the payment source.

(d) The Care Plan will be signed and dated by the Client or their legal representative, the Case Manager and when applicable, the Registered Nurse.

(e) The Care Plan shall be updated annually at the time of the reassessment or more frequently when changes occur with the service need(s).

(f) All support systems, both formal and informal shall be included as part of the Care Plan.

(g) A copy of the Care Plan shall be given to the client with the original maintained in the client's case file.

(h) Service(s) shall be authorized in the care Plan at the minimum level and for the least amount of service hours that will adequately meet the client's needs.

(i) Home and Community Based Alternatives services shall supplement, but not replace or duplicate, support systems that are in place in sufficient quantity to meet client's needs.

(j) Case Managers should be aware of available agency and community services and should be responsible for coordination of services provided to the client.

(3) PROCEDURES-Service Authorization:

(a) An Agency Service Authorization Form or the Care Plan must be sent to the Serviced Provider requesting specific services for the client.

R510-400-11. Case Management.

(1) Case Management shall be provided to all recipients of Home and Community Based Alternatives services.

(2) PROCEDURES-Case Management:

(a) Case Management shall include an assessment, annual reassessment, three quarterly review and monthly contacts. Other visits or contacts shall be made and documented in accordance with the client's need or as directed in the Care Plan.

(b) A monthly or more frequent contact shall be made with the client, service provider, and/or the client's family.

(c) Assessment and quarterly review, reduction and/or termination of service should be done face to face when possible, with the exception of when the client moves out of the area, enters a nursing facility or dies. Telephone and electronic contacts can be used to communicate adjustments to care plans or service orders, or changes of status.

(d) The Case Manager will record all client contacts and significant changes with a progress note.

(e) The Case Manager is expected to maximize the client's informal support systems.

(f) The Case Manager shall make quarterly reviews during the third month following the Assessment and every third month thereafter. Quarterly Reviews shall be conducted in the client's home and will document the following:

(i) A review of the services being delivered.

(ii) Changes in the client's condition.

(A) Progress toward Care Plan objectives and goals.

(B) Appropriateness of services.

(3) The client's satisfaction and concerns with the service provision.

(4) Status of rental/purchased equipment.

R510-400-12. Record Keeping.

(1) The recipient of Home and Community Based Alternatives program shall have an individual case file that include client eligibility, assessment of the client's needs, care plan, quarterly reviews, progress notes, and when applicable legal documents addressing guardianship, advanced directives or powers of attorney.

(2) PROCEDURES-Confidentiality of Records:

(a) All information and records generated within the Home and Community Based Alternatives Program and Older American Act Title IIIB Programs shall be retained and released in accordance with the Government Records Management Act (GRAMA), pursuant to Section 63G-2-101, et seq.

(b) Information that pertains to Home and Community Based Alternatives program and Older Americans Act Title IIIB Programs shall be classified as "private."

(c) Information that is medical, psychiatric, or psychological in content shall be classified as "controlled."

(d) Clients' case files and service authorizations must be secured in a locked file at the Agency or designated Service Provider.

(e) Home and Community Based Alternatives program and Older Americans Act Title IIIB Programs case records, files, authorizations, and supporting program documentation, shall be kept for five years following termination of services or until all audits initiated within the five years have been completed, whichever is later. After the end of the specified retention period, the documents shall be destroyed according to GRAMA document destruction requirements.

(3) PROCEDURES-Sharing of Records:

(a) The Case Manager shall provide a copy of the completed Care Plan to the client. The completed Assessment may be provided to the Service Provider.

R510-400-13. Client Rights and Responsibilities.

(1) The Agency shall have the responsibility to develop a method to inform all eligible clients of their rights and responsibilities. This shall be evidenced by a signed Clients Rights and Responsibilities Form in the case file.

(2) PROCEDURES-Client Rights:

Client rights shall include:

(a) To be fully informed of their rights and responsibilities governing personal conduct while participating in the programs. This shall be evidenced by a signed and dated Clients Rights and Responsibilities form in the client's file.

(b) To be fully informed of services and related fees for which the Client may be responsible and to be informed of all changes in fees.

(c) To be afforded self-determination through participation in the development of the Care Plan. This includes the right to refuse service(s), referrals to health care institutions or other agencies, and to refuse to participate in research studies.

(d) To be assured confidential treatment and maintenance of records. Clients have the right to approve or refuse the release of their records. However, all information and records generated in these Programs shall be shared pursuant to GRAMA, Section 63G-2-101, et seq.

(e) To be treated with consideration, respect, dignity and individuality, including privacy in care for personal needs.

(f) To be assured that personnel who provide services, are either licensed, certified or registered with the appropriate governmental entity and that they have demonstrated the ability to correctly implement the services for which they are responsible.

(g) To receive proper identification from the individual providing services.

(3) PROCEDURES-Client Responsibilities:

Client Responsibilities shall include:

(a) The Client has the responsibility to report to the Case Manager, any changes in their circumstance that may impact eligibility or need for services.

(b) The Client is responsible for keeping appointments and

when unable to do so for any reason, to notify the Case Manager or Service Provider.

(c) The Client is responsible for their actions and their consequences. If she refuses service of does not follow the instructions in the Care Plan, future service may be withheld until she agrees to correct any identified problem(s).

R510-400-14. Grievance Procedures.

(1) The Agency shall have the responsibility to develop procedures for Client Grievance and Fair Hearing.

(2) PROCEDURES-Client Grievance:

Agency Grievance and Fair Hearing Procedures shall address the following process:

(a) An eligible client or clients who has made application for Program Services, whose service has been denied, reduced, or terminated shall be given the opportunity to grieve through a fair hearing when he believes that their interests in laws, regulations, standards or criteria related to the program were violated. Grievance and Fair Hearing procedures shall follow the Agency's contractual agreement with the Division.

(b) The Agency shall assist the client in following the correct procedures to grieve any adverse decision and request a fair hearing.

(c) Any client shall be given the opportunity to appeal to the State level, when she believes that laws, regulations, standards or criteria related to the programs were violated and have not been resolved the Agency process.

R510-400-15. Applicant Lists.

(1) The Agency shall maintain an active applicant list when funding dictates that services cannot be provided for all who have been identified as needing services.

(2) PROCEDURES-Applicant Lists:

(a) The applicant list will be comprised of those persons who have been screened using the DAAS approved Demographic Intake and Risk Screening form and have at least a moderate risk score at the time of screening.

(b) Prioritization of the applicant list shall be ranked by a high to moderate risk score, and the clients with the highest risk are provided services first as funding becomes available.

(c) The applicant list will be re-prioritized with each new potential client added.

(d) For applicants who do not meet applicant list criteria, information will be provided on other community resources that may be available.

R510-400-16. Termination of Services.

(1) The Agency shall allow for the interruption, transfer and for termination for the client receiving Home and Community-based Alternatives Services or Older Americans Act Title IIIB Services as changes in client needs, Agency Provider, circumstances or conditions occur.

(2) PROCEDURE-Temporary Interruption of Service:

(a) Program Services may be interrupted for temporary periods (e.g. Hospitalization, out-of-state visiting, etc.): Such discontinuance of service shall not exceed 90 consecutive days. After this period, the case will either be closed and reopened as a new case with no priority other than Risk Score, or will be reviewed by the agency to determine a resumption of services.

(b) Waivers of time limit of the temporary interruption may be granted on an individual basis.

(c) Requests for a waiver must be in writing and approved by the Agency Director or his designee.

(d) Waiver requests, documentation and accompanying approval or denial must be maintained in the client's file.

(3) PROCEDURE-Termination of Service:

(a) When a client terminates service, the Case Manager will document in the case file the circumstances that precipitated the termination.

(b) Services may be terminated due to the following circumstances:

(i) When health and safety needs can no longer be met.

(ii) Death of the client.

(iii) Program funding does not allow services to continue.

(iv) The client transfers out of the original planning and service area. The client may re-apply at the new planning and service area and services may be provided as funds permit to eligible adults as determined by DAAS Policy and Procedures for the Home and Community Based Alternatives program services.

(v) The client's financial situation improves beyond eligibility criteria, in which case agencies are encouraged to investigate options for transferring the client to other appropriate programs when discontinuing services. However, in this transfer, the client should not be given special preferences that would place them ahead of other potential clients in an applicant list situation.

(vi) Client chooses to leave the program.

(vii) Client refuses to comply with the care plan, exhibits inappropriate behaviors, or does not pay monthly fees.

R510-400-17. Purchase and Rental of Equipment.

(1) Equipment may be purchased or rented if it is deemed necessary for the client's care, providing no other funding source is available.

(2) Purchased equipment is the property of the Agency. The Agency will develop policy and procedures that address the disposition, inventory and repair of equipment.

(3) PROCEDURE-Purchase or Rental of Equipment:

(a) The Case Manager shall have the client and/or the client's representative sign an agreement if the equipment is to be returned to the Agency when it is no longer needed.

(b) The agency's policy will address the disposition, inventory and repair of equipment.

(c) Equipment shall be reviewed quarterly as part of the quarterly review to assess the need for continued use and condition of equipment.

R510-400-18. Contract Compliance.

(1) The Division is responsible for monitoring Home and Community Based Alternatives Services and Older Americans Act Title IIIB Programs. Each Agency shall be monitored annually.

(2) PROCEDURE-Scheduling:

(a) The Agency shall be notified at least 10 working days prior to an annual monitoring review. The Division will notify the Agency of the procedures, scheduling, monitoring standards and any other relevant information concerning the monitoring visit.

(3) PROCEDURE- Division Monitoring Procedures:

(a) In preparation for the monitoring visit, the Division shall review any corrective action reports, correspondence identifying technical assistance needs, and other pertinent information.

(b) The Division will monitor service program activities, case records, service expenditures, caseloads and contractual provisions.

(c) The Division will review randomly selected case records and interview the clients and Agency Case Managers as necessary to complete the monitoring process.

(d) A minimum of 10% or ten case records (whichever is the largest of the case load) will be reviewed. At times more records, up to 100% of program records, may be reviewed if the Division finds significant program inconsistencies, errors in documentation, inadequate provision of service, or any other aspect that the Division deems necessary.

(e) An exit interview will be conducted with the Agency Director or designee. The purpose of this interview is to present

findings of the monitoring visit. The findings shall include:

(i) Overall evaluation of the performance of the Home and Community Based Alternatives Services Program.

(ii) Contractual, Policy and Procedure deficiencies.

(iii) Situations where additional review of case files of other documentation is necessary.

(iv) Areas where a plan of correction will be needed.

(v) Identify and recognize positive or innovative aspects of the Agency's service program.

(vi) Client comments.

(g) The Division may request a Department fiscal/contract audit of the Agency. This audit may be requested when the Division documents problems concerning:

(i) Budget balance

(ii) Agency Service Provider sub-contract monitoring.

(iii) Case Management supervision.

(iv) Provider/Client complaints.

(v) Timely payment for service.

(vi) Intake and referral.

(vii) Access problems.

(viii) Eligibility problems.

(h) PROCEDURE-Division Monitoring Report:

(a) The Division shall provide the Agency with a written report of its formal findings within 10 working days of the monitoring visit.

(b) The report will include contractual, policy and procedural compliance status and areas of special concern.

(c) The Division will require a corrective action plan that addresses noncompliance issues as needed.

(4) PROCEDURE-Responding to Reports:

(a) The Agency may appeal issues of disagreement to the Division within 10 working days from receipt of the report. If the Division, upon appeal, concludes that a corrective action must take place, the Agency will implement the action.

(b) A correction action plan will be implemented in accordance with an agreed upon time schedule, but will not exceed 90 days from the time the Division approves the plan.

(c) The Division will provide technical assistance to the Agency, as requested, to complete the correction action plan. The Agency will notify the Division upon implementation of the corrective action plan. The Division may make additionally monitoring visits to the Agency to review records and assure that the corrective action plan requirements were met.

(d) The Division may enact the termination clause of the DHS contract if a corrective action plan is not implemented by the Agency.

R510-400-19. Emergency Interim Service.

(1) Home and Community Based Alternatives Services may be provided to clients when circumstances warrant the emergency provision of service.

(2) PROCEDURES-Emergency Interim Service:

(a) The existing emergency will be identified and documented.

(b) Services may begin immediately and will continue until assessment determines appropriate service needs and levels for the client.

(c) The DAAS approved Assessment will be completed within 5 working days from the initiation of the Emergency Interim Service.

(3) PROCEDURES-Adult Protective Services clients:

(a) Emergency Interim Services may be provided to Adult Protective Services clients when abuse, neglect or exploitation has been substantiated and Home and Community Based Alternatives Services would help eliminate the abuse, neglect or exploitation.

(b) Emergency Interim Services may be provided for up to sixty (60) days under Protective Eligibility. Client financial eligibility, waiting list and fee criterion may be waived or disregarded with substantiated Adult Protective Service Cases.

(c) When as Adult Protective Services Worker determines that the Emergency Interim Services are needed, she will contact the Agency.

(d) As soon as possible, the client shall be assessed for eligibility according to the Home and Community Based Alternatives Services program standards. If during the 60 days the client is determined to no longer meet the Protective Eligibility, the APS Worker shall make referrals in collaboration with the Agency Case Manager to other appropriate agencies for services.

(e) The Agency will ascertain whether it is able to meet the emergency needs relating to the client's disability and/or protective need.

(f) Emergency Interim Services are considered an intermediate step while the Adult Protective Services Worker, works with the client to resolve their current crisis and/or problem. The client's case will remain with the Adult Protective Service Worker during the Emergency Interim Service period. Services will be coordinated between the APS Worker and Agency Case Manager.

(4) PROCEDURES-Protective Eligibility:

(a) The client's situation is an emergency and requires immediate intervention.

(b) The client is capable of consenting to and accepts services.

(c) The client in unable to consent and the Department has a court order authorizing the service referral.

KEY: elderly, home care services, long-term care alternatives
June 30, 2015 62A-3-101 through 62A-3-312
Notice of Continuation June 30, 2017

R527. Human Services, Recovery Services.
R527-330. Posting Priority of Payments Received.
R527-330-1. Purpose and Authority.

1. The Office of Recovery Services (ORS) is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to clarify that ORS must first apply support payments to current support obligations before applying the money to past-due arrears debts. It also establishes a method for posting payments when the obligor does not provide instructions for the payment and has more than one case.

R527-330-2. Posting Priority of Payments Received.

The Office of Recovery Services shall determine to which debt payment will be credited in instances where the obligor has more than one case, and the obligor has not expressed his/her intention.

For Child Support Services cases, if the obligor expresses intent, the payment shall be credited to the case indicated. When the obligor has not expressed his/her intention, the Office of Recovery Services/Child Support Services (ORS/CSS) shall pro-rate payments, other than payments received from the Federal tax refund intercept program, among all of the obligor's current support obligations. Once the current support obligations have been met, a payment shall be split equally among all of the obligor's child support cases with arrears.

A payment credited to a case with arrears shall be applied to the oldest debt, and arrears owed to the family shall be paid before arrears owed to the State according to the priority specified in 42 USC Sec. 657.

KEY: child support, debt, public assistance programs
October 23, 2012 62A-11-107
Notice of Continuation January 23, 2017 42 USC 657

R527. Human Services, Recovery Services.
R527-378. Withholding of Social Security Benefits.
R527-378-1. Withholding of Social Security Benefits.

If social security is the obligor's sole means of support and the case is an arrears only case, the notice to the Social Security Administration to withhold income shall be limited to 25 percent of the social security benefit amount.

KEY: child support, social security
January 15, 1999 62A-11-107
Notice of Continuation June 2, 2017

R527. Human Services, Recovery Services.
R527-601. Establishing or Modifying an Administrative Award for Child Support.
R527-601-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide information as to when ORS will use best available income, what is considered best evidence available, and the procedures that must be taken for best evidence available to be used when establishing or modifying an administrative order.

R527-601-2. Documentation of Income.

When complete documentation of current income as required by Section 78B-12-203 is not available for both parents in an administrative default, participation, or stipulation proceeding, the office shall use the best evidence available to determine the appropriate child support award, in accordance with Section 78B-12-201.

R527-601-3. Definition.

Best evidence available shall include the following: an affidavit from a cooperating parent concerning the income of a parent who is not cooperating in providing documentation of his/her income; historical records including old tax returns, pay stubs, employer statements, or Department of Workforce Services records; market rate earned by persons with the same occupation as reported by the Department of Workforce Services; or the federal minimum wage.

R527-601-4. Procedures.

Prior to using the best evidence available to establish or modify an administrative order, the office shall mail a copy of an affidavit describing the evidence to the last known address of the uncooperative parent against whom the evidence is being used.

KEY: child support
June 15, 2009 **62A-1-111**
Notice of Continuation June 2, 2017 **62A-11-107**
78B-12-201
78B-12-203

R527. Human Services, Recovery Services.
R527-928. Lost Checks.
R527-928-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibility and procedures for the Office of Recovery Services/Child Support Services for issuing a new check that has been lost or stolen.

R527-928-2. Responsibility for Collection and Investigation.

ORS shall be responsible for the collection and investigation of lost or stolen Department of Human Services checks. The term check and warrant are used interchangeably.

R527-928-3. Cashing Department of Human Services Issued Checks.

The Department of Human Services has specific policy concerning the replacement of department issued checks which have been reported as lost or stolen and on which a stop payment has been placed or where the check has been returned as a forged check to the financial institution or store.

The Department will only replace a department issued check for any bank or store if all of the following conditions have been met:

1. An employee of the cashing establishment personally observed the payee endorse the check. This includes the original payee and any third party to whom the payee may have made the check payable.

2. An employee of the cashing establishment examined a picture bearing governmental issued media presented by the payee and was satisfied that the person presenting the check is in fact the payee. Examples of acceptable identification are, a Utah Motor Vehicle Operator's License or a Utah Identification card. Identification must be obtained for all payees endorsing the check. The employee must note the source of the identification and the identification number on the check.

3. The employee who approved the cashing of the check must have made an identifying mark, such as initials, which will identify the employee in the event legal action is initiated at a later date.

4. The replacement check to the cashing establishment must be requested within 120 days of the date of notification of the stop payment.

KEY: public assistance programs, banks and banking, fraud
April 7, 2008 **70A-3**
Notice of Continuation June 2, 2017 **35A-3-601**
35A-3-603
62A-11-104
62A-11-107

R590. Insurance, Administration.
R590-122. Permissible Arbitration Provisions.
R590-122-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Section 31A-2-201(3).

R590-122-2. Purpose and Scope.

(1) This rule recognizes arbitration as an acceptable method of alternative dispute resolution. The rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

(a) define the term "permissible arbitration provision" as set forth in Sections 31A-21-313(3)(c) and 31A-21-314(2); and

(b) provide guidelines upon which disclosure of a contract arbitration provision is to be made.

(2)(a) Except as provided in (b), this rule is applicable to both individual and group contracts and to all classifications or lines of insurance.

(b) This rule does not apply to individual and group income replacement policies or health benefit plans that comply with R590-215.

R590-122-3. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 78B-11-102 and 31A-1-301, and the following:

(1) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(2) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

(3) "Optional binding arbitration" means a contract provision requiring any party to an insurance contract to submit to arbitration as set forth in such contract at the election of any contracting party, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-122-4. Rule.

(1) Compulsory non-binding arbitration is contrary to the public interest and is not a "permissible arbitration provision."

(2) Optional binding arbitration at the exclusive election of an insured party is a "permissible arbitration provision," in which case the disclosure provisions in paragraph 5 below may not be applicable.

(3) Both compulsory and optional binding arbitration at the election of either the insured or the insurer are "permissible arbitration provisions."

(4) Policy forms containing optional binding arbitration provisions for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

(5) Except as excluded in paragraph 2 above, each application or binder pertaining to an insurance policy which contains a permissible arbitration provision must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policy holder and, in the case of group insurance, shall be contained in the certificate of insurance or other disclosure of benefits.

(6) Both compulsory binding arbitration provisions and optional binding arbitration provisions may not be construed to preclude any dispute resolution by any small claims court having jurisdiction.

(7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act" (Title 78B, Chapter 11).

(8) Any such agreement for arbitration may not obligate any insured to pay more than 50% of the advance payments required to begin the arbitration process.

(9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-122-5. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
October 3, 2012 31A-2-201
Notice of Continuation June 5, 2017

R590. Insurance, Administration.
R590-149. Americans with Disabilities Act (ADA) Grievance Procedures.
R590-149-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 31A-2-201(3)(a) and Subsection 63G-3-201(3) of the State Administrative Rulemaking Act. The Insurance Department, pursuant to 28 CFR 35.107, adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35, and Title II of the Americans With Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs or activities of the Insurance Department, or be subjected to discrimination by the department because of a disability.

R590-149-2. Definitions.

(1) "The ADA Coordinator" means the employee assigned by the commissioner to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the department.

(2) "Department" means the Insurance Department.

(3) "Designee" means an individual appointed by the commissioner or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the department affected by a complaint filed under this rule.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" includes caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Qualified Individual" means an individual who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the department. A qualified individual also who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

R590-149-3. Filing of Complaints.

(1) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the department's ADA coordinator, unless the complaint alleges that the ADA coordinator was non-compliant, in which case qualified individuals shall file their complaints with the department's designee.

(3) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the commissioner has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(4) Each complaint shall:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304,consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R590-149-4. Investigation of Complaint.

(1) The ADA coordinator or designee shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Subsection R590-149-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

R590-149-5. Issuance of Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director in writing or in another acceptable suitable format stating what action, if any, should be taken on the complaint.

(2) If the coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or by another acceptable format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator or

designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R590-149-6. Appeals.

(1) The complainant may appeal the decision of the director to the commissioner by filing an appeal within ten working days from the receipt of the director's decision.

(2) The appeal shall be filed in writing, or in another accessible format reasonably suited to the complainant's ability.

(3) The commissioner may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the commissioner's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The commissioner or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The commissioner may direct additional investigation as necessary. The commissioner shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The final decision shall be issued by the commissioner within fifteen working days after receiving the complainant's appeal and shall be in writing or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the commissioner or designee is unable to reach a final decision within the fifteen working day period, he shall notify the complainant in writing or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a decision.

R590-149-7. Classification of Records.

(1) Records created in administering this rule are classified as "protected" under Subsection 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R590-149-5 or a final decision upon appeal under Section R590-149-6, portions of the record pertaining to the complainant's medical condition shall remain classified as "private" as defined under Section 63G-2-302(1)(b) or "controlled" as defined in Section 63G-2-304, as consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or commissioner shall be classified as "public" information. All other records, except "controlled" records under Subsection R590-149-7(2), shall be classified as "private."

R590-149-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(1) the state Anti-Discrimination Complaint Procedures Section 67-19-32 and 34A-5-107;

(2) the Federal ADA Complaint Procedures 28 CFR 35.170 through 28 CFR 35.178; or

(3) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: insurance, ADA
August 2, 2011 63G-3-201(2)
Notice of Continuation June 5, 2017

R590. Insurance, Administration.
R590-173. Credit For Reinsurance.
R590-173-1. Authority.

This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.

R590-173-2. Purpose.

The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

R590-173-3. Definitions.

A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).

B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusteed assuming insurer.

D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means and includes:

(1) For business ceded by domestic insurers authorized to write accident and health or property and casualty insurance:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer:

(b) reserves for losses reported and outstanding;

(c) reserves for losses incurred but not reported;

(d) reserves for allocated loss expenses; and

(e) unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, accident and health or annuity insurance:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums:

(b) aggregate reserves for accident and health policies;

(c) deposit funds and other liabilities without life or accident and health contingencies; and

(d) liabilities for policy and contract claims.

E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S. C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

F. "Obligations," means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-9.A.(3) means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:

(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

(2) maintains total adjusted capital above the Company Action Level RBC; and

(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than $20,000,000, except as provided in paragraph (2) of this subsection. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(3)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(4)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Assets deposited in the trust shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;

(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;

(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and

(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

(5) Equity interests

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) investments in common shares of a solvent institution

organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(7) Investment companies

(a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and

(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

R590-173-8. Credit for Reinsurance--Certified Reinsurers.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of Administrative Rule R590-114, Letters of Credit, or Sections 10, or 11 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

TABLE

Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(1) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(2) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(3) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

(a) Line 1: Fire

(b) Line 2: Allied Lines

(c) Line 3: Farmowners multiple peril

(d) Line 4: Homeowners multiple peril

(e) Line 5: Commercial multiple peril

(f) Line 9: Inland Marine

(g) Line 12: Earthquake

(h) Line 21: Auto physical damage

(4) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(5) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.

B. Certification Procedure.

(1) The commissioner shall promptly post notice upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

(2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Subsection C of

this section.

(b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.

(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i) Standard and Poor's;

(ii) Moody's Investors Service;

(iii) Fitch Ratings;

(iv) A.M. Best Company; or

(v) any other nationally recognized Statistical rating organization.

(d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited, to the following:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

TABLE
Financial Strength Ratings by Rating Agency

Ratings	Best	S and P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3 B1, B2, B3, Caa, Ca, C	BB+, BB, BB- B+, B, B-, CCC+, CC, CCC-, DD

(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) available from the commissioner upon request;

(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(f) Regulatory actions against the certified reinsurer;

(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;

(h) For certified reinsurers not domiciled in the U.S., audited financial statements, (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last 3 years filed with its non-U.S. jurisdiction supervisor;

(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(k) Any other information deemed relevant by the commissioner.

(5) Based on the analysis conducted under subparagraph 4(e) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph (4)(a) if the commissioner finds that

(a) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed $100,000 for each cedent; or

(b) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds $50,000,000.

(6) The assuming insurer must submit a properly executed Form CR-1 (available from the commissioner upon request) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(a) Notification within 10 days of any regulatory actions

taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(b) Annually, Form CR-F or CR-S, as applicable;

(c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (d) below;

(d) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer's supervisor;

(e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(f) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(g) Any other information that the commissioner may reasonably require.

(8) Change in Rating or Revocation of Certification.

(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph (4)(a).

(b) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(d) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 9 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

(1) If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non- U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non- U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

(a) The framework under which the assuming insurer is regulated.

(b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(d) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(e) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

(f) The history of performance by assuming insurers in the domiciliary jurisdiction.

(g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(h) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(i) Any other matters deemed relevant by the commissioner.

(3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsections 8.C(2)(a) to (i).

(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the commissioner requires. The

assuming insurer shall be considered to be a certified reinsurer in this state.

(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subparagraph B(7)(a) of this section.

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Subparagraph B(7)(b) of this section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

E. Mandatory Funding Clause. Reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified juridictions.

R590-173-9. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(1) cash;

(2) securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or

(4) any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of R590-114, Letters of Credit and the applicable portions of Sections R590-173-10 and 11 of this rule have been satisfied.

R590-173-10. Trust Agreements Qualified under Section 9.

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsections R590-173-10.A.(11) and (12).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer any amounts held in the trust account that exceed 102 % of the actual amount

required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-9. in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-10.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

(13) Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in their insurance agreement.

(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

B. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-10.C.(1)(b).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

C. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(b) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(c) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(d) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established

pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the current fair market value of the trust account is no less than 102 % of the required amount;

(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-10.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on such amounts held; and

(c) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection R590-173-10.C.(2)(b);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

D. Financial reporting

(1) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

E. Existing agreements

(1) Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

F. Identification of a beneficiary

(1) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-11. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-12. Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

R590-173-13. 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 this rule and its application to other persons or circumstances are not affected.

KEY: insurance
January 10, 2017 31A-2-201
Notice of Continuation June 5, 2017

R590. Insurance, Administration.
R590-238. Captive Insurance Companies.
R590-238-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Section 31A-37-106.

R590-238-2. Purpose and Scope.

The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act (the Act), Chapter 37, Title 31A. This rule applies to all captive insurance companies licensed under the Act.

R590-238-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.

(2) "Company" means a captive insurance company as defined in Section 31A-1-301.

(3) "Work Papers" or "working papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

(4) "Captive Insurance Manager" means a person that:

(a) is on the Utah Approved Captive Management Firms list;

(b) pursuant to a written contract with a captive insurance company, provides and coordinates services including but not limited to:

(i) accounting;

(ii) statutory filings;

(iii) signed annual statements; and

(iv) coordination of related services;

(c) acts as an intermediary that facilitates and assists the captive in meeting its statutory requirements under Title 31A.

R590-238-4. Annual Reporting Requirements.

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of one of its executive officers and the captive manager and shall be prepared using generally accepted accounting principles ("GAAP"). The annual report shall be filed electronically consistent with directions from the commissioner.

(2) A captive insurance company shall observe the requirements of Section 31A-4-113 when it files an annual report of its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) All captive insurance companies are to use the "Captive Insurance Company Annual Statement Form" except Risk Retention Group (RRG) insurers and special purpose financial captives which shall use the NAIC's Annual and Quarterly Statements.

(4) The Captive Insurance Company Annual Statement shall include a statement of a qualified Actuary titled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves.

R590-238-5. Risk Limitation.

(1) The commissioner may limit the net amount of risk a captive insurance company retains for a single risk after considering the impact of the retention on the captive insurance company's capital and surplus.

(2) The commissioner may also prescribe and demand additional capital and surplus of any captive insurance company if he determines that the captive insurance company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive insurance company.

R590-238-6. Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants ("AICPA").

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the AICPA.

(ii) The opinion of the independent certified public accountant shall cover all years presented.

(iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

(i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.

(ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.

(iv) that the accountant consents to the requirements of R590-238-10;

(v) that the accountant consents and agrees to make the work papers as defined in R590-238-3(3) available for review by the commissioner, his designee or his appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority.

(d) Financial Statements

(i) The financial statements required shall be as follows:

(A) balance sheet;

(B) statement of gain or loss from operations;

(C) statement of changes in financial position;

(D) statement of cash flow;

(E) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

(F) notes to financial statements.

(ii) The notes to financial statements shall be those required by GAAP and shall include:

(A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.

(e) Certification of Loss Reserves and Loss Expense Reserves of the company's opining actuary

(i) The annual audit shall include an actuarial opinion as to the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner.

(ii) The individual who certifies as to the reasonableness of reserves shall be approved by the Commissioner and shall be a Fellow or Associate of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, for property and casualty companies or a Fellow or Associate of the Society of Actuaries and a member in good standing of the American Academy of Actuaries for life and health companies.

(4) Certification under Subsection R590-238-6(3)(e) shall be in such form as the commissioner deems appropriate.

R590-238-7. Designation of Independent Certified Public Accountant.

(1) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained.

R590-238-8. Notification of Adverse Financial Condition.

A company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the company in writing of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

R590-238-9. Additional Deposit Requirement.

(1) Whenever the commissioner deems that the financial condition of a company warrants additional security, the commissioner may require the company to deposit, in trust for the company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Utah or a member bank of the Federal Reserve System with the commissioner.

(2) The commissioner shall return the deposit or letter of credit of a company if the company ceases to do any business only after being satisfied that all obligations of the company have been discharged.

(3) A company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than seven years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers.

R590-238-11. Documentation Required to be Held in Utah by Licensed Captives.

(1) All companies licensed by the commissioner as a captive insurance company, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(2) Original documents may be kept in the offices of the company's captive manager, the company's parent, or the company itself. Accurate and complete copies shall be held in an office located in Utah that is designated by the company and approved by the commissioner.

R590-238-12. Reinsurance.

(1) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(3) The commissioner, in his discretion, may require that complete copies of all reinsurance treaties and contracts be filed and approved by him.

R590-238-13. Service Providers.

No person shall act, in or from this state, as a captive insurance manager, broker, agent, or salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

R590-238-14. Directors.

(1) Every company shall report any change in its executive officers or directors to the commissioner within thirty days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

(2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. Such person may receive

reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

R590-238-15. Conflict of Interest.

(1) Each company licensed in Utah is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude a person from being a director or officer in more than one insurance company.

(2) Each officer, director, and key employee shall file a yearly disclosure with the board of directors.

R590-238-16. Acquisition of Control of or Merger with Domestic Company.

The acquisition of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103, notwithstanding the Commissioner may waive or modify the requirements for public notice and hearing when the Commissioner concludes the public hearing is not necessary due to limited public interest in the change of control.

R590-238-17. Suspension or Revocation.

(1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:

(a) the company has not commenced business according to its plan of operation within two years of being licensed;

(b) the company has ceased to carry on insurance business in or from within Utah;

(c) at the request of the company; or

(d) any reason provided in Section 31A-37-505.

(2) Before the commissioner takes any action set forth under R590-238-17(1) the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to act, and shall afford the company a hearing as to such proposed action in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

R590-238-18. Change of Information in Initial Application.

(1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

(2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.

(3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.

R590-238-19. Application and Forms.

(1) Any person that wants to form a captive insurance company shall make application to the commissioner for authority to conduct a captive insurance company using the form, "Application to Form a Captive Insurance Company."

(2) One complete copy of the application including forms, attachments, exhibits and all other papers and documents filed as a part thereof, shall be filed electronically with the commissioner through the captive.utah.gov website. Accompanying payments may be filed by personal delivery or mail addressed to: Office of the Commissioner, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114-6901, Attention: Captive Insurance Administrator, or call and pay by credit card.

(3) The application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.

(4) A company must include with its application, a feasibility study demonstrating the feasibility of the business plan of the company. The department may test the feasibility of the study by examining the company's corporate records, including: charter; bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and other factors as the commissioner deems necessary.

R590-238-20. Fee Schedule. Initial Application. Renewal.

(1) An applicant for a certificate of authority under the captive insurance code shall pay a nonrefundable fee established in the department's fee rule, R590-102-8 for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, R590-102-8.

(3) Each company shall pay an annual nonrefundable e-commerce (internet technology services) fee each year in the amount established in the department's fee rule, R590-102-18(1)(b) to the commissioner.

(4) Each captive insurance company shall pay a nonrefundable fee in the amount established in the department's fee rule, R590-102 for photocopies of documents to the commissioner.

R590-238-21. Authorized Forms.

(1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801) 538-3800:

(a) "Application to Form A Captive Insurance Company;"

(b) "Biographical Affidavit For Captive Insurance Company;"

(c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"

(e) "Utah Approved Irrevocable Letter of Credit;"

(f) "Statement if Economic Benefit to the State of Utah;" and

(g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."

(2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:

(a) "Application for Placement on Approved Captive Insurer Management Firm List;"

(b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;" and

(c) "Application For Authorization As An Independent Certified Public Accountant for Captive Insurance Companies."

(3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) A company shall file a "Statement of Economic Benefit to the State of Utah" form with its initial application and for each of the 12 months ending December 31, of each applicable year.

(5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website,

www.captive.utah.gov/licensing.html.

R590-238-22. 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 this rule and its application to other persons and circumstances are not affected.

KEY: captive insurance
September 25, 2015 31A-2-201
Notice of Continuation May 2, 2017 31A-37-106

R590. Insurance, Administration.
R590-240. Procedure to Obtain Exemption of Student Health Programs From Insurance Code.
R590-240-1. Authority.

This rule is promulgated and adopted pursuant to Subsection 31A-1-103(3)(d) and Section 31A-2-201.

R590-240-2. Purpose and Scope.

(1) The purpose of this rule is to exempt student health programs established by institutions of higher education from regulation under the Utah Insurance Code.

(2) Health insurance from an insurer made available by an institution to its students is not exempt from provisions of the Utah Insurance Code under this rule, even if:

(i) the insurer's policy is integrated into the overall student health program offered by the institution to its students; or

(ii) use of the institution's student health center is an integral, or mandatory, part of health care coverage under the insurer's policy.

R590-240-3. Definitions.

(1) All definitions in Section 31A-1-301 are incorporated by reference.

(2) "Board" means the State Board of Regents established in Section 53B-1-103.

(3) "Eligible member" means:

(a) an eligible student;

(b) a spouse of an eligible student; or

(c) a child of, dependent of, or child placed for adoption with, an eligible student.

(4) "Eligible recipient" means:

(a) an eligible member;

(b) the institution's officers, faculty, and employees; or

(c) upon application by the institution or the institution's student health center, other persons approved by written order of the commissioner.

(5) "Eligible student" is as defined by each institution, but shall, at a minimum, require that the student be enrolled with the institution.

(6) "Health care provider" means a person who provides health care services.

(7) "Health care services" means "health care" as defined in Section 31A-1-301.

(8) "Institution" means an institution of higher education or postsecondary educational institute that consists of the following:

(a) an institution described in Section 53B-1-102; or

(b) an institution of higher education that has been accredited by the Northwest Commission on Colleges and Universities.

(9) "Student health center" means a facility that is operated to provide health care services to eligible recipients:

(a) by that institution or pursuant to contract with that institution;

(b) that employs health care providers, or contracts with health care providers, which may make referrals to other health care providers;

(c) is funded, at least in part, by payment from one of the following sources, which payment grants access to the student health center during the period of time for which the eligible student is registered:

(i) a fee assessed to and paid by each eligible student at registration; or

(ii) the tuition paid by the eligible student;

(d) may accept insurance payments, or assist users in completing claims forms for insurance claims; and

(e) may require eligible recipients to pay;

(i) an additional fee for each time the student health center is visited;

(ii) an additional fee for specialty services;

(iii) an additional fee for medical equipment; or

(iv) an additional fee for medication received at the student health center.

(10)(a) "Student health program" means a plan organized, established, or adopted, by an institution to provide or arrange for health care services for eligible members.

(b) A "student health program" may include providing:

(i) coverage for limited health care services;

(ii) coverage for health care services on an emergency basis; or

(iii) coverage for health care services by out-of-area health care providers under the following situations:

(A) on an emergency basis, where a prudent layperson would expect the absence of immediate medical attention to result in placing the eligible member's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

(B) during periods when the individual is not enrolled in any classes at the institution, but is still matriculated with the institution. Such periods may include time between semesters or quarters, traditional breaks for the summer, or time away from the institution while attending another higher education institution under a plan approved by the institution; and

(C) during periods when the individual is enrolled in classes at the institution, but is not living within commuting distance of the institution, such as while participating in an internship program.

(11)(a) "Supplemental health care services" means health care services provided by the student health program in addition to those available at a student health center.

(b) "Supplemental health care services" includes health care services provided by contract between:

(i) the institution, and

(ii) any of the following or any combination of the following:

(A) a healthcare provider;

(B) a clinic or other association of health care providers;

(C) a network plan; or

(D) an insurer authorized to provide health insurance.

(12) "Utah Insurance Code" means Title 31A, Utah Code Annotated.

R590-240-4. Supporting Facts.

(1) Student health programs are offered only to eligible members at institutions. These institutions have an interest in providing affordable health care coverage to their students in order to enable the students to receive limited health care to ensure that progress toward a degree or certificate is not impeded by unattended medical needs. In some instances, student health programs may also be offered to the spouses of students and other dependents of students, as well.

(2) Student health programs are not established to enable the institutions to make a profit from providing health care coverage. Providing or arranging for health care services for students is not the primary purpose of institutions; it is only incidental to the institutions' primary purpose, which is to educate those that matriculate with the institution. In addition, the economic impact on health care providers directly, and the public indirectly, from students receiving medical services and then not being able to pay for those services, is mitigated by providing students at institutions with access to affordable health care coverage through student health programs.

(3) An institution is either a state institution under the direct control of, and supervised by, the Board, or it must be accredited by the Northwest Commission on Colleges and Universities. In order to be accredited, an institution must meet strict accounting standards, and be able to demonstrate it is financially solid. An institution must therefore comply with the

strict accounting and financial requirements of the Board or the Northwest Commission on Colleges and Universities, which would include the need to reflect on the financial statements of the institution any liability for risks the institution assumes, or costs the institutions may incur, for its student health program. Any shortfall in providing health care services at the student health center would become the obligation of the institution.

R590-240-5. Exemption Requirements.

A student health program may be exempted from the provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.

(1) A student health program must:

(a) be established by an institution;

(b) have assets that are owned by:

(i) an institution;

(ii) a trust; or

(iii) the trustees, in their fiduciary capacities, of a trust established by an institution; and

(c) be operated by:

(i) an institution; or

(ii) the institution's authorized agent or affiliate.

(2) The primary purpose of the institution must be higher education, and not the providing of a student health program.

(3) Payment of covered claims of the student health program must be secured by adequate assets:

(a) that are:

(i) secured by being:

(A) pledged;

(B) guaranteed;

(C) contributed;

(D) placed in trust; or

(E) using a combination of Subsections 5(3)(a)(i)(A), 5(3)(a)(i)(B), 5(3)(a)(i)(C), and 5(3)(a)(i)(D); and

(ii) secured under Subsection 5(3)(a)(i) by:

(A) the student health program;

(B) the institution that organizes, adopts, or establishes the student health program;

(C) the owner of the institution described in Subsection 5(3)(a)(ii)(B);

(D) an affiliate of the entity described in Subsection 5(3)(a)(ii)(C); or

(E) a combination of the entities described in Subsections 5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D); and

(b)(i) in an amount and type that would be required under Chapter 17 of the Utah Insurance Code; or

(ii) as approved by the commissioner by written order; and

(c) under such terms and conditions as the commissioner determines by written order.

(4) The student health program may not be offered to or enroll anyone other than an eligible member.

(5) The student health program must have a comprehensive legal structure that demonstrates that:

(a) the assets described in Subsection 5(3) will be administered in a fiduciary manner to assure that assets are available to provide eligible health care services and to provide payments to health care providers, as outlined in any contracts between the student health program and health care providers;

(b) the student health program will be administered by an experienced administrator; and

(c) the student health program shall be administered according to contracts between:

(i)(A)(I) the student health program; or

(II) the institution; or

(III) both the student health program and the institution; and

(B) the enrollees; and

(ii)(A)(I) the student health program; or

(II) the institution; or

(III) both the student health program and the institution; and

(B) health care providers.

(6) Except for emergency health care services, or out-of-area or out-of-country health care providers, health care services for those enrolled in the student health program must be provided:

(a) at a student health center; or

(b) pursuant to a contract with health care service providers, by which those health care providers will provide health care services upon a referral from the student health center.

(7) Any supplemental health care services provided by the student health program must:

(a) be obtained from an insurer authorized to provide health insurance;

(b) be backed by assets under the conditions set forth in Subsection 5(3); or

(c) use a combination of Subsections 5(7)(a) and 5(7)(b).

(8) The student health program must provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.

(9) The student health program or the institution or both shall annually provide the department an informational copy of all current policies, booklets, and advertising.

(10) The student health program or the institution or both must state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance, and the student health program has been exempted from regulation under the Utah Insurance Code, and must cite the date, docket number, and title of the docket by which the exemption was granted.

(11) The student health program must reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.

(12) The student health program must provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.

R590-240-6. Procedure for Obtaining Exemption.

(1) An institution desiring to have its student health program exempted from the provisions of the Utah Insurance Code shall file with the Utah Insurance Department an application in a form prescribed by the commissioner for an order exempting the student health program, and shall provide verifiable documentation in support of its application, including documentation to support the exemption requirements in Section 5 have been met. The application must provide assurance the institution has sufficient assets placed in trust, or otherwise pledged or guaranteed under Section 3, under conditions acceptable to the commissioner, to meet any liability the institution may have for its student health program.

(2) The commissioner may require the following:

(a) additional evidence or information, to be provided by the institution;

(b) an examination of the student health program by the department, the costs of which shall be borne by the institution; or

(c) a hearing on the application.

(3) Upon finding that the student health program complies with the provisions of this rule, the commissioner may issue an order exempting the student health program from the provisions of the Utah Insurance Code. The commissioner may place any

restrictions or conditions upon the exemption the commissioner believes to be necessary to protect the interests of the residents of this state.

(4) A student health program is not exempt from the Utah Insurance Code unless the commissioner has issued a written order explicitly stating the student health program is exempt from the Utah Insurance Code.

(5) The department shall retain continuing jurisdiction over the institution's student health program to assure compliance with the terms and conditions in Section 5, including any changes in the law or the facts upon which the exemption is granted.

R590-240-7. Rule and Findings.

(1) A student health program is an insurer as defined in Section 31A-1-301, and must comply with the requirements of the Utah Insurance Code unless it is exempted from regulation by statute or by this rule.

(2) Pursuant to Subsection 31A-1-103(3)(d)(i), the commissioner finds that a student health program which operates in accordance with the provisions of Section 5, and obtains an order of exemption under Section 6, does not require regulation for the protection of the interests of the residents of this state, and that such student health program is exempt from regulation under the Utah Insurance Code.

(3) If the institution assumes any risk of the student health program, the institution must:

(i) apply for authority to conduct the business of an insurer, or

(ii) apply to the commissioner for an exemption under this rule.

(4) Health insurance from an insurer made available by an institution to its eligible members is not exempt from the Utah Insurance Code under this rule, even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

(5) Any inconsistencies between the provisions of this rule and any order previously issued exempting a student health program from regulation under the Utah Insurance Code are resolved by incorporating the provisions of this rule.

R590-240-8. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-240-9. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance exemptions
August 8, 2007 **31A-1-103**
Notice of Continuation June 5, 2017 **31A-2-201**

R641. Natural Resources; Oil, Gas and Mining Board.
R641-100. General Provisions.
R641-100-100. Scope of Rules.

These rules will be known as "Rules of Practice and Procedure Before the Board of Oil, Gas and Mining" and will govern all proceedings before the Board of Oil, Gas and Mining or any hearing examiner designated by the Board. These rules provide the procedures for formal adjudicative proceedings. The rules for informal adjudicative proceedings are in the Coal Program Rules, the Oil and Gas Conservation Rules and the Mineral Rules.

R641-100-200. Definitions.

For the purpose of these rules, the following definitions shall apply:

"Adjudicative proceeding" means a Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63G, Chapter 4, Administrative Procedures Act, of the Utah Code Annotated (1953, as amended) shall not be included within this definition.

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a hearing examiner for its hearings in accordance with these rules. Unless the context of these rules requires otherwise, references to the Board shall be deemed to refer to the hearing examiner when so appointed.

"Division" means the Utah Division of Oil, Gas and Mining.

"Intervenor" means a person permitted to intervene in a proceeding before the Board.

"Legally Protected Interest" means the interest of any "owner" or "producer" as defined in Section 40-6-2 Utah Code Annotated (1953, as amended), or as defined by the rules of the Board.

"Party" means the Board, Division or other person commencing a proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in a proceeding.

"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 other agency.

"Petitioner" means a person who requests the initiation of any proceeding (Request for Agency Action).

"Proceeding" means an adjudicative proceeding or other proceeding.

"Respondent" means any person against whom a proceeding is initiated or whose property interests may be affected by a proceeding initiated by the Board or any other person.

"Staff" means the Division staff. The Staff will have the same rights as other parties to the proceedings.

R641-100-300. Liberal Construction.

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board.

R641-100-400. Deviation from Rules.

When good cause appears, the Board may permit a deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary or in the furtherance of justice or the statutory purposes of the Board. Notwithstanding this, in no event may the Board permit a deviation from a rule when such rule is mandated by law.

R641-100-500. Utah Administrative Procedures Act.

All rights, powers and authority described in Title 63G, Chapter 4, "Utah Administrative Procedures Act," of the Utah Code Annotated (1953, as amended), are hereby reserved to the Board. These rules shall be construed to be in compliance with the Utah Administrative Procedures Act.

R641-100-600. Electronic Meetings.

610. This section establishes procedures for conducting Board meetings by electronic means as authorized by Section 52-4-207.

611. Electronic participation under this section shall require both video and audio communication, unless the video component is waived by the Board.

620. The following provisions govern any meeting at which one or more Board members appear electronically:

621. If one or more members of the Board may participate electronically, public notice of the meeting shall so indicate. 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.

622. Notice of the meeting and the agenda shall be posted at the anchor location and the Utah Public Notice Website.

623. Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting.

624. When notice is given of the possibility of a Board member appearing electronically, any Board member may do so and shall be counted as present for the purposes of a quorum and may fully participate and vote on any matter coming before the Board.

625. At the commencement of the meeting, or at such a time as any Board member initially appears electronically, the chair shall identify for the record all those who are appearing electronically. Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the chair.

626. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from where the participants are connected. The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

630. The following provisions govern any Board meeting at which one or more witnesses or a party appears electronically:

631. The Board may for good cause allow a party or its witnesses in a formal proceeding to appear electronically if circumstances prevent attendance of the person at the noticed location, provided a party seeking permission shall provide the Board with a written request at least 48 hours prior to the meeting stating the reasons personal attendance is not possible, and providing evidence that written electronic notice has been provided to the Division, all petitioners, and all parties who have filed a response under R641-105-200.

632. The Board may for good cause allow a party or its witnesses in a formal proceeding, on an exceptional basis, to appear electronically with less than 48 hours notice to the Board and parties, if unforeseen circumstances, including weather, prevent attendance in person at the noticed location.

633. Any party participating electronically shall have an attorney present at the noticed location.

KEY: administrative procedures
September 26, 2013 **52-4-207**
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-101. Parties.
R641-101-100. Division as a Party.

The Division will be considered a party to a proceeding before the Board or its designated hearing examiner.

R641-101-200. Rights of Parties.

Subject to such limitations as the Board will impose in the interests of conducting orderly and efficient proceedings, each party to a proceeding will be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the proceeding.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-102. Appearances and Representations.
R641-102-100. Natural Persons.

A natural person may appear on his or her own behalf and represent himself or herself at hearings before the Board.

R641-102-200. Attorneys.

Except as provided in R641-102-100, representation at hearings before the Board will be by attorneys licensed to practice law in the state of Utah or attorneys licensed to practice law in another jurisdiction which meet the rules of the Utah State Bar for practicing law before the courts of the State of Utah.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-103. Intervention.
R641-103-100. Order Granting Leave to Intervene Required.

Any person, not a party, desiring to intervene in a formal proceeding will obtain an order from the Board granting leave to intervene before being allowed to participate. The hearing examiner shall not have the authority to grant a leave to intervene. Such order will be requested by means of a signed, written petition to intervene which shall be filed with the Board by the Response Date and copy promptly mailed to each party by the petitioner. Any petition to intervene or materials filed after the date a response is due under R641-105-200 may be considered at the Board's next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

110. Content of Petition. Petitions for leave to intervene must identify the proceeding by title and by docket and cause number, to the extent determinable. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the Board.

120. Response to Petition. Any party to a proceeding in which intervention is sought may make an oral or written response to the petition for intervention. Such response will state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

130. Granting of Petition. The Board shall grant a petition for intervention if it determines that:

131. The petitioner's legal interests may be substantially affected by the formal adjudicative proceedings, and

132. The interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

140. Order Requirements.

141. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

142. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

143. The Board may impose conditions at any time after the intervention.

144. If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation therein, the Board may dismiss the intervenor from the proceeding.

145. In the interest of expediting a hearing, the Board may limit the extent of participation from an intervenor. Where two or more intervenors have substantially like interests and positions, the Board may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-104. Pleadings.
R641-104-100. Pleadings Enumerated.

Pleadings before the Board will consist of a Notice of Agency Action, a Request for Agency Action (also referred to herein as a "petition"), responses, and motions, together with affidavits, briefs and memoranda of law and fact in support thereof.

120. Initiation. Except as otherwise permitted by R641-109-400 regarding emergency orders, all adjudicative proceedings shall be commenced by either:

121. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

122. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

130. Notice of or Request for Agency Action. A Notice of Agency Action and a Request for Agency Action shall be filed and served according to the following requirements:

131. Notice of Agency Action. A Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board; or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

131.100 The names and mailing addresses of all respondents and other persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

131.200 The name of the proceeding and the file number or other reference number;

131.300 The date that the Notice of Agency Action was mailed;

131.400 A statement that such proceeding is to be conducted formally according to the provisions of these rules and Sections 63G-4-204 to 63G-4-209 of the Utah Code Annotated (1953, as amended), if applicable;

131.500 If a response is required, a statement that a written response must be filed within 20 days of the mailing date of the Notice of Agency Action;

131.600 A statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

131.700 A statement of the legal authority and jurisdiction under which the proceeding is to be maintained;

131.800 The name, title, mailing address, and telephone number of the Board and the Division; and

131.900 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Board or Division, the questions to be decided.

132. Unless Waived, the Division shall:

132.100 Mail the Notice of Agency Action to each party; and

132.200 Publish the Notice of Agency Action if required by statute or rule.

133. Persons other than the Board or Division may petition for Board action. Such request may be for rulemaking, an appeal of a Division determination in an adjudicative proceeding before the Division, a right, permit, approval, license, authority or other affirmative relief from the Board. That petitioner's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Board, or by his or her attorney, and shall include:

133.100 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

133.200 A space for the Board's file number or other reference number;

133.300 The name of the proceeding, if known;

133.400 Certificate of mailing of the Request for Agency Action;

133.500 A statement of the legal authority and jurisdiction under which Board action is requested;

133.600 A statement of the relief sought from the Board; and

133.700 A statement of the facts and reasons forming the basis for relief.

134. Two or more grounds of complaint concerning the same subject matter may be included in one Request for Agency Action (petition) but should be numbered and stated separately. Two or more petitioners may join in one request if their respective complaints are against the same person and deal substantially with the same violation of law, rule, regulation or order of the Board.

135. A Request for Agency Action and other pleadings shall be in the form prescribed in R641-104-200. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

136. After receiving a Request for Agency Action, the Division shall, unless waived, insure that notice by mail has been given to all parties. The Division shall also provide notice by publication if required by below. The written notice shall:

136.100 Give the Board's file number or other reference number;

136.200 Give the name of the proceeding;

136.300 Designate that the proceeding is to be conducted formally according to these rules and the provisions of Sections 63G-4-204 to 63G-4-209 of the Utah Code Annotated (1953, as amended), if applicable;

136.400 If a response is required, state that a written response must be filed within twenty (20) days of the mailing or publication date of the Request for Agency Action;

136.500 State the time and place of the hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

136.600 Give the name, title, mailing address, and telephone number of the Board and Division.

137. If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Board may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

140. Responses.

141. In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his/her representative with twenty (20) days of the mailing date of the Notice of Agency Action or the Request for Agency Action that shall include:

141.100 The Board's file number or other reference number;

141.200 The name of the adjudicative proceeding;

141.300 A statement of the relief that the respondent seeks;

150. Default.

151. The Board may enter an order of default against a party if:

151.100 A party fails to attend or participate in a hearing; or

151.200 A respondent fails to file a response under R641-140 above.

152. The order shall include a statement of the ground for default and shall be mailed to all parties.

153. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

154. After issuing the order of default, the Board shall conduct any further proceedings necessary to complete the

proceeding without the participation of the party in default and shall determine all issues in the proceeding, including those affecting the defaulting party.

160. Motions. Motions may be submitted for the Board's decision on either written or oral argument and the filing of affidavits in support or contravention thereof may be permitted. Any written motion will be accompanied by a supporting memorandum of fact and law.

170. Exhibits. Exhibits will be clearly marked to show the docket and cause numbers, the party proffering the exhibit, and the number of the exhibit.

R641-104-200. Form.

210. Request for Agency Action (petition) will contain a title which will be substantially in the following form:

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                              TABLE

            BEFORE THE BOARD OF OIL, GAS, AND MINING
                 DEPARTMENT OF NATURAL RESOURCES
                          STATE OF UTAH

In the Matter of the               Docket No.
Request for Agency
Action of John Doe,
Petitioner for                     Cause No.
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or

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                              TABLE

            BEFORE THE BOARD OF OIL, GAS, AND MINING
                 DEPARTMENT OF NATURAL RESOURCES
                          STATE OF UTAH

     John Doe,         Petitioner,        Request for
                                          Agency Action
     v.                                   Docket No.
     Richard Doe,      Respondent.        Cause No.
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220. Docket and Cause Number. Upon the filing of a Request for Agency Action (petition), the secretary of the Board will assign a docket and a cause number to the matter. The secretary will enter the docket and cause numbers for the matter, together with the date of filing, on a separate docket provided for that purpose. Thereafter, all pleadings offered in the same proceeding will bear the docket and cause numbers assigned and will be noted with the filing date upon the docket page assigned.

230. Content and Size of Pleadings. Pleadings should be double-spaced and typed on plain, white, 8-1/2" x 11" paper. They must identify the proceeding by title and by docket and cause number, if known. All pleadings will contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought.

240. Amendments to Pleadings. The Board may, upon motion of the responsible party made at or before the hearing, allow any pleadings to be amended or corrected. Defects which do not substantially prejudice any of the parties will be disregarded.

250. Signing of Pleadings. Pleadings will be signed by the party or the party's attorney and will show the signer's address and telephone number. The signature will be deemed to be a certification by the signer that he or she has read the pleading and that, he or she has taken reasonable measures to assure its truth.

KEY: administrative procedures
1988 **40-6-1 et seq.**
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-105. Filing and Service.
R641-105-100. Requests for Agency Action (Petitions).

All Requests for Agency Action filed by the 10th day of each calendar month may be considered by the Board for inclusion in the schedule of matters to be heard at its regularly scheduled meeting during the following calendar month. At the time the request is filed, petitioner will also file any motions, affidavits, briefs, or memoranda intended to be offered by petitioner in support of said petition or motion. Petitioner will file with the petition a list of the names and last known addresses of all persons required by statute to be served or whose legally protected interest may be affected thereby. This rule will apply to all matters initiated by the Board on its own motion as well as to statements, briefs, or memoranda in support thereof prepared by the Division or by the Staff. Any petition or other materials filed after the 10th day of any calendar month may be considered by the Board at its regularly scheduled meeting during the following month only upon separate motion of petitioner made at or before the hearing for good cause shown.

R641-105-200. Responses.

All responses to petitions, responses to motions by petitioner, and motions by respondent, together with all affidavits, briefs, or memoranda in support thereof, filed by the 10th day of the month or two weeks before the scheduled hearing, whichever is earlier, in the month in which the hearing on the matter is scheduled (the "Response Date") may be considered by the Board at its regularly scheduled meeting during that month. This rule will apply to all statements, briefs, or memoranda prepared by the Division or by the Staff in response to any petition or motion by petitioner. Any responses or other materials filed after the Response Date may be considered at the Board's regularly scheduled meeting for that month only upon separate motion of respondent made at or before the hearing for good cause shown.

R641-105-300. Motions.

All motions or responses to motions available to a petitioner or respondent at the time his or her Request for Agency Action or response is filed will be filed and served with the petition or response as provided in R641-105-100 and R641-105-200. Subsequent written motions, other than motions for exceptions to the filing requirements of these rules, must be filed by the time the response is due under R641-105-200. Oral responses and written responses to motions may be presented or filed at or before the hearing. Oral motions and responses to oral motions may be presented at the hearing.

R641-105-500. Exhibits.

Any exhibits intended to be offered by petitioners will be filed at least thirty days prior to the date of the hearing for which the exhibits are intended. Respondents and intervenors will supply exhibits with their respective pleadings. Any exhibits intended to be offered by the parties in rebuttal of evidence presented at the hearing will be presented at the hearing. The Board, on its own motion, may order the continuance of any proceeding until the next regularly scheduled meeting of the Board in order to allow adequate time for the Staff to evaluate any evidence presented during the hearing.

R641-105-600. Place of Filing.

An original and 14 copies of all pleadings, affidavits, briefs, memoranda and exhibits will be filed with the secretary of the Board. The Board may direct any party to provide additional copies as needed.

R641-105-700. Temporary Procedural Rulings.

The Chairman or designated Acting Chairman of the Board may issue temporary rulings on procedural motions that arise between Board hearings dates. These rulings will be reviewed and decided upon by the Board at its next regularly scheduled meeting.

R641-105-800. Computation of Time.

In computing any period of time prescribed or allowed by these rules, or by the Board, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intervening Saturdays, Sundays, or legal holidays will be excluded in the computation.

KEY: administrative procedure
October 1, 2001 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-106. Notice and Service.
R641-106-100. Notice.

Except as otherwise provided by law, before any rule, regulation, or order, or amendment thereof, will be made by the Board, notice of a hearing thereon will be given by publication in a newspaper of general circulation in the city of Salt Lake and county of Salt Lake, Utah, and in any newspapers of general circulation published in the county where the land affected or some part thereof is situated. Such notice will be issued in the name of the state and will be signed by the Board or its secretary. The notice will specify the title and docket and cause numbers of the proceeding, the time and place of hearing and whether the case is set for hearing before the Board or its designated hearing examiner. The notice will briefly state the purpose of the proceeding and general nature of the order, rule, or regulation to be promulgated or effected. The notice will also state the name(s) of the petitioner and respondent, if any, and, unless the order, rule, or regulation is intended to apply to and affect the entire state, the notice will specify the land or resource affected by such order, rule, or regulation. In addition to published notice, the Board will give notice by mail to all parties. Such notice will be given by the 1st day of the month in which the hearing is held, but in no event less than fifteen days before the hearing.

R641-106-200. Personal Service of Request (Petition) and Related Pleadings.

210. In addition to the notice required by R641-106-100, wherever personal service is required by applicable law, the petitioner, or the Board in any proceeding initiated by the Board, will personally serve a copy of the petition and all pleadings filed with the secretary of the Board at the same time as the petition, other than exhibits, on any person required by statute to be served and on any respondent. The Board, on its own motion, may at any time also require petitioner to effect personal service on any other person whose legally protected interests may, in the opinion of the Board, be affected by the proceedings. In such event the Board will prescribe the schedule for service of the request and any response thereto.

220. Personal service under this rule will be accomplished no later than the 15th day of the month preceding the month in which the first hearing in the matter is held.

230. Personal service may be made by any person authorized by law to serve summons in the same manner and extent as is provided by the Utah Rules of Civil Procedure for the service of summons in civil actions in the district courts in this state. Proof of service will be in the form required by law with respect to service of process in civil actions. Persons otherwise entitled to personal service under these rules may be served by publication or mail in accordance with Rule 4(f) of the Utah Rules of Civil Procedure. In such a case, any member of the Board may consider ex parte and rule upon the verified motion of any person seeking to accomplish service by publication or mail.

R641-106-300. Service of Other Pleadings.

A copy of all pleadings filed subsequent to the Request for Agency Action or Notice of Agency Action, which are not required to be personally served pursuant to R641-106-200, will be served by mailing a copy thereof, postage prepaid, to all parties at the same time such pleadings are filed with the secretary of the Board. Exhibits need not be served on all parties, but may be examined by any party during the normal business hours of the Division by arrangement with the secretary of the Board.

R641-106-400. Service on Attorney or Representative.

When any party has appeared by attorney or other authorized representative, service upon such attorney or representative constitutes service upon the party he or she represents.

R641-106-500. Proof of Service.

There will appear on all documents required to be served a certificate of service in substantially the following form:

I hereby certify that I have this day served the foregoing instrument upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by mailing a copy thereof, properly addressed, with postage prepaid, to).

Dated at , this day of , 19 .

Signature

or

I hereby certify that I have this day served the foregoing document by publication of a notice thereof in the (name of newspaper), a newspaper of general circulation in Salt Lake City and County and in (name of newspaper(s)), (a) newspaper(s) of general circulation in the County of . Copies of the notices are attached to this certification.

Dated at , this day of , 19 .

Signature

R641-106-600. Additional Notices Upon Request.

Any person desiring notification by mail from the Board or the Division of all matters before the Board will request the same in writing by filing with the Board or Division his or her name and address and designating the area or areas in which he or she has an interest and in which he or she desires to receive such notice. The Division may designate an annual fee, payable in advance, for such notice.

R641-106-700. Continuance of Hearing Without New Service.

Any hearing before the Board held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published. In the event of any continuance, a statement thereof will be made in the record of the hearing which is continued. If a hearing (not the deliberation or decision) is continued indefinitely, the Board will provide new notice in accordance with these rules before hearing the matter.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-107. Prehearing Conference.
R641-107-100. Conference.

The Board, may in its discretion, on its own motion or motion of one of the parties made on or before the date the response is due, direct the parties or their representatives to appear at a specified time and place for a prehearing conference. At the conference, consideration will be given to:

110. Simplification or formulation of the issues;

120. The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents;

130. Limitation of the number of expert witnesses;

140. Arranging for the exchange of proposed exhibits or prepared expert testimony; and

150. Any other matters which may expedite the proceeding.

R641-107-200. Order.

The Board will issue an order based upon its own findings or upon the recommendation of its designated hearing examiner, which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order will control the subsequent course of the proceeding before the Board unless modified by subsequent order for good cause shown.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-108. Conduct of Hearings.
R641-108-1. Conduct of Hearings.

Except as may otherwise be provided by law, hearings before the Board will be conducted as follows:

R641-108-100. Public Hearings.

All hearings before the Board will be open to the public, unless otherwise ordered by the Board for good cause shown. All hearings shall be open to all parties.

101. Full Disclosure. The Board shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

R641-108-200. Rules of Evidence.

The Board shall use as appropriate guides the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objections of a party, the Board:

201. May exclude evidence that is irrelevant, immaterial, or unduly repetitious.

202. Shall exclude evidence privileged in the courts of Utah.

203. May receive documentary evidence in the form of a copy of excerpt if the copy or excerpt contains all pertinent portions of the original document.

204. May take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record or other proceedings before the Board, and of technical or scientific facts within the Board's specialized knowledge.

R641-108-300. Testimony.

Testimony presented to the Board in a hearing will be sworn testimony under oath or affirmation.

R641-108-400. Failure to Appear.

When a party to a proceeding fails to appear at a hearing after due notice has been given, the Board may dismiss or continue the matter or decide the matter against the interest of the party who fails to appear.

R641-108-500. Order of Presentation of Evidence.

Unless otherwise directed by the Board at the hearing, the order of procedure and presentation of evidence will be as follows:

510. Hearings upon Petition:
511. Petitioner
512. Respondent, if any
513. Staff
514. Intervenors
515. Rebuttal by Petitioner
520. Hearings upon motion of the Board:
521. Staff
522. Respondent
523. Rebuttal by Staff

R641-108-600. Oral Argument and Briefs.

Upon the conclusion of the taking of evidence, the Board may, in its discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the Board.

R641-108-700. Record of Hearing.

The Board will cause an official record of the proceedings to be made in all hearings as follows:

710. The record may be made by means of a certified shorthand reporter employed by the Board or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Board chooses not to employ the reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing will be filed with the Board. Parties desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

720. The record of the proceedings may also be made by means of a tape recorder or other recording device if the Board determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter.

730. If the Board deems it unnecessary, it will not have the record of a hearing transcribed unless requested to do so by a party. Whenever a transcript or tape recording of a hearing is made, it will be available at the office of the Board for the use of the parties, but may not be withdrawn therefrom.

R641-108-800. Summons and Fees.

810. Summons. The Board may issue summons on its own motion or upon request of a party for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other evidence.

820. Witness Fees. Each witness who appears before the Board will be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, which amount will be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the Board will be paid from the funds appropriated for the use of the Board. Any witness summoned by a party other than the Board may, at the time of service of the summons, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness will not be required to appear.

R641-108-900. Discovery.

Upon the motion of a party and for good cause shown, the Board may authorize such manner of discovery against another party, including the Division or the Staff, as may be prescribed by and in the manner provided by the Utah Rules of Civil Procedure.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-109. Decisions and Orders.
R641-109-100. Board Decision.

Upon reaching a final decision in any proceeding, the Board will prepare a decision to include findings of fact, conclusions of law, and an order. The Board may direct the prevailing party to prepare proposed findings of fact, conclusions of law, and an order, which will be completed within five days of the direction, unless otherwise instructed by the Board. Copies of the proposed findings of fact, conclusions of law, and order will be served by the prevailing party upon all parties of record before being presented to the Board for signature. Notice of objection thereto will be submitted to the Board and all parties of record within five days after service.

R641-109-200. Entry of Order.

The Chairman or designated Acting Chairman of the Board will sign the order on any matter no later than 30 days following the end of the hearing on that matter, and cause the same to be entered and indexed in books kept for that purpose. The order will be effective on the date it is signed, unless otherwise provided in the order. Upon petition of a person subject to the order and for good cause shown, the Board may extend the time for compliance fixed in its order.

R641-109-300. Notice.

The Board will notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law will be delivered or mailed to each party.

R641-109-400. Emergency Orders.

Notwithstanding the other provisions of these regulations, the Director of the Division or any member of the Board is authorized to issue an emergency order without notice or hearing, in accordance with the applicable statute. The emergency order will remain in effect no longer than until the next regular meeting of the Board, or such shorter period of time as will be prescribed by statute.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-110. Rehearing and Modification of Existing Orders.
R641-110-100. Time for filing.

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

R641-110-200. Contents of Petition.

A petition for rehearing will set forth specifically the particulars in which it is claimed the Board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

R641-110-300. Response to Petition.

All other parties to the proceeding upon which a rehearing is sought may file a response to the petition at any time prior to the hearing at which the petition will be considered by the Board. Such responses will be served on the petitioner at or before the hearing.

R641-110-400. Action on the Petition.

The Board will act upon the petition for a rehearing at its next regularly scheduled meeting following the date of its filing. If no action is taken by the Board within such time, the petition will be deemed to be denied. The Board may set a time for a hearing on said petition or may summarily grant or deny the petition.

R641-110-500. Modification of Existing Orders.

A request for modification or amendment of an existing order of the Board will be treated as a new petition for purposes of these rules.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-111. Declaratory Rulings.
R641-111-100. Petition for Declaratory Rulings.

Any person may by a Request for Agency Action filed in accordance with these rules, petition the Board for a declaratory ruling on the applicability of any statute, rule, regulation or order to the operations or activities of that person. The petition will include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute or rule or regulation involved.

R641-111-200. Ruling.

The Board will consider the petition, and will:

210. Notify the person that no declaratory ruling will be issued;

220. Issue a nonbinding declaratory ruling; or

230. Decide that a binding declaratory ruling affecting the petitioner or any other person may be proper, and initiate a proceeding under R641-104 which will be conducted according to these rules.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-112. Rulemaking.
R641-112-1. Rulemaking.

The Board will promulgate rules using the procedure described in the "Utah Administrative Rulemaking Act," Section 63G-3-101 et seq. and under the authority provided at Sections 40-6-5, 40-8-6(1), and 40-10-6(1).

KEY: administrative procedures
1994 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-113. Hearing Examiners.
R641-113-100. Designation of Hearing Examiner.

The Board may, in its discretion, on its own motion or motion of one of the parties, designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusions of law to the Board. Any member of the Board, Division Staff, or any other person designated by the Board may serve as a hearing examiner.

R641-113-200. Powers.

The order appointing a hearing examiner may specify or limit the hearing examiner's powers and may direct the hearing examiner to report only upon particular issues; to do or perform particular acts or to receive and report evidence only; and to fix the time and place for beginning and closing the hearing and for filing a report. Unless the hearing examiner's authority is limited, the hearing examiner will be vested with general authority to conduct hearings in an orderly and judicial matter, including authority to:

210. Summon and subpoena witnesses;

220. Administer oaths, call and question witnesses;

230. Require the production of records, books and documents;

240. Take such other action in connection with the hearing as may be prescribed by the Board in referring the case for hearing; and

250. Make evidentiary rulings and propose findings of fact and conclusions of law.

R641-113-300. Conduct of Hearings.

Except as limited by the Board's order, hearings will be conducted under the same rules and in the same manner as hearings before the Board, as more fully described in R641-108.

R641-113-400. Rules, Findings, and Conclusions of Hearing Examiner.

During the hearing, objections to evidence will be ruled upon by the hearing examiner. Where a ruling sustains objections to an admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the evidence excluded and the objecting party may then make an offer of proof in rebuttal. Upon completion of the hearing, the hearing examiner will prepare a written summary of all such rulings and will make proposed findings of fact and conclusions of law in a proposed order in conformance with R641-109. All such proposed rulings, findings, and conclusions will be distributed to the parties and filed with the Board.

R641-113-500. Board Final Order.

No later than the 10th day of the month following filing of the proposed rulings, findings, and conclusions by the hearing examiner, any party may file with the Board such briefs or statements as they may desire regarding the proposals made by the hearing examiner, but no party will offer additional evidence without good cause shown and an accompanying request for de novo hearing before the Board. The Board will then consider the hearing examiner's proposed rulings, findings, and conclusions and such additional materials as filed by the parties and may accept, reject, or modify such proposed rulings, findings, and conclusions in whole or in part or may remand the case to the hearing examiner for further proceedings, or the Board may set aside the proposed ruling, findings, and conclusions of the hearing examiner and grant a de novo hearing before the Board. If a Board member acted as the hearing examiner, then said Board member will not participate in the Board's determination.

KEY: administrative procedures

1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-114. Exhaustion of Administrative Remedies.
R641-114-100. Requirement.

Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

200. Informal Adjudicative Proceedings before the Division. In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will then be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order. Such appeal shall be treated as a contested case which is processed as a formal proceeding under these rules. Such rights to request an informal hearing before the Division or to appeal the Division order and have the matter be contested and processed "formally" are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

300. Formal Adjudicative Proceedings. In any formal adjudicative proceeding before the Board, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Board may be allowed to seek judicial review of the final Board action.

KEY: administrative procedures
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-115. Deadline for Judicial Review.
R641-115-100. Filing.

A party shall file a petition for judicial review of final Board action within 30 days after the date that the order constituting the final Board action is issued. The petition shall name the Board and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63G, chapter 4 of the Utah code annotated (1953, as amended).

KEY: administrative procedures
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-116. Judicial Review of Formal Adjudicative Proceedings.
R641-116-110.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63G-4-403 through 63G-4-405 of the Utah Code Annotated (1953, as amended).

KEY: administrative procedures
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-117. Civil Enforcement.
R641-117-100. Agency Action.

In addition to other remedies provided by law and other rules of this Board, the Board or Division may seek enforcement of an order by seeking civil enforcement in the district courts subject to the following:

110. The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

120. Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

130. The action may request, and the court may grant, any of the following:

131. declaratory relief;

132. temporary or permanent injunctive relief;

133. any other civil remedy provided by law; or

134. any combination of the foregoing.

200. Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

210. Until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Board, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

220. If the Board or Division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

230. If a petition for judicial review of the same order has been filed and is pending in court.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-118. Waivers.
R641-118-1. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the Division.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R641. Natural Resources; Oil, Gas and Mining Board.
R641-119. Severability.
R641-119-1. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections or phrases shall remain in full force and effect.

KEY: administrative procedures
1988 40-6-1 et seq.
Notice of Continuation June 7, 2017

R657. Natural Resources, Wildlife Resources.
R657-14. Commercial Harvesting of Protected Aquatic Wildlife.
R657-14-1. Purpose and Authority.

(1)(a) Under authority of Sections 23-14-3, 23-14-18, and 23-14-19, and Sections 23-15-7 through 23-15-9, this rule provides the procedures, standards, and requirements for:

(i) harvesting protected aquatic wildlife for use as fish bait; and

(ii) seining protected aquatic wildlife.

(b) The commercial harvesting of brine shrimp and brine shrimp eggs is regulated under Rule R657-52.

R657-14-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting authorized species of protected aquatic wildlife in the absence of the primary seiner.

(b) "Certified bait dealer" means a person who has obtained a certificate of registration authorizing the harvest, possession, or sale of protected aquatic wildlife for use as dead fish bait.

(c) "Harvest" means to seine, or gather in protected aquatic wildlife and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of protected aquatic wildlife takes place.

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of protected aquatic wildlife, including any employee, agent, family member, or donated labor.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Nongame fish" means all species of fish, except:

(i) any species or hybrid species of trout, including albino, brook, brown, cutthroat, golden, grayling, kokanee salmon, lake or mackinaw, rainbow, splake, and tiger;

(ii) Bonneville cisco;

(iii) bluegill;

(iv) bullhead;

(v) catfish;

(vi) crappie;

(vii) green sunfish;

(viii) northern pike;

(ix) largemouth bass;

(x) Sacramento perch;

(xi) smallmouth bass;

(xii) striped bass;

(xiii) tiger muskellunge;

(xiv) walleye;

(xv) white bass;

(xvi) whitefish;

(xvii) wiper; and

(xviii) yellow perch.

(h) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting protected aquatic wildlife.

(i) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade protected aquatic wildlife for pecuniary consideration or advantage.

(j) "Seining" means to harvest protected aquatic wildlife with the use of a net or other similar device.

(k) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

R657-14-3. Certificate of Registration Required.

(1)(a) A person may not harvest, possess, or transport protected aquatic wildlife without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(b) The original copy of the certificate of registration must be present at the harvest location while harvesting protected aquatic wildlife.

(2) Except as provided in Subsection R657-14-13(4), a person must obtain a separate certificate of registration to engage in the following activities:

(a) harvesting or selling designated species of fish for use as fish bait; and

(b) seining and selling protected aquatic wildlife for any purpose other than for use as fish bait.

(3) A certificate of registration is not required for the retail sale of dead protected aquatic wildlife imported into Utah, provided the product is clearly labeled as to its out-of-state origin.

(4) Certificates of registration are not transferable, except as provided in Section R657-14-21.

(5) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(6)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

R657-14-4. Application for Certificate of Registration.

(1) Applications for certificates of registration are available at division offices.

(2) Applications for commercial seining or harvesting protected aquatic wildlife for use as fish bait may be submitted any time during the year.

(3) If an application for a certificate of registration is made in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(4)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(5)(a) The application review process may require up to 45 days.

(b) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(i) the applicant has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(ii) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(iii) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife.

(6) The division may limit the number of certificates of registration issued or deny any application in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application is approved, the division shall issue the applicant a certificate of registration that specifies:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the gear that may be used;

(d) the hours during which protected aquatic wildlife may be harvested;

(e) the means and amounts of protected aquatic wildlife that may be transported; and

(f) any restriction imposed on the applicant in addition to the provisions of this rule.

(8)(a) Certificates of registration for seining or harvesting protected aquatic wildlife for use as fish bait are valid for a calendar year.

R657-14-5. Use of Helpers.

(1)(a) Except as provided in Subsection (2), any person aiding the certificate of registration holder in seining protected aquatic wildlife shall be in possession of a helper card.

(b) A helper card shall be deemed to be in possession if it is on the person or on the boat from which the person is working.

(2) A helper card is not required of any person engaged only in the retail sale or transportation of protected aquatic wildlife.

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of protected aquatic wildlife only while working under the direct supervision of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each Certificate of Registration may be obtained from the wildlife registration office at any time during the year.

R657-14-6. Records - Report of Activities.

(1) Each person who has been issued a certificate of registration authorizing the harvest or sale of protected aquatic wildlife shall keep accurate records of the number or weight harvested and to whom the products were sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3)(a) A person who has been issued a certificate of registration for seining or harvesting protected aquatic wildlife for use as fish bait shall include the following information, broken down by month, in an annual report to the division:

(i) the species of protected aquatic wildlife harvested;

(ii) the water from which the protected aquatic wildlife were harvested; and

(iii) the total number or weight of protected aquatic wildlife harvested.

(b) A person who has been issued a certificate of registration for the retail sale of protected aquatic wildlife shall include the following information, broken down by month, in an annual report to the division:

(i) the name and address of each person from which protected aquatic wildlife was purchased or sold;

(ii) the species of protected aquatic wildlife purchased or sold; and

(iii) the weight and number of protected aquatic wildlife purchased or sold.

(c) Report forms are provided by the division.

R657-14-7. Species of Protected Aquatic Wildlife That May Be Harvested.

(1)(a) The division may authorize a person to harvest or sell the following nongame fish:

(i) Utah Chub (Gila atraria);

(ii) Carp (Cyprinus carpio);

(iii) Mountain sucker (Catostomus platyrhynchus);

(iv) Utah sucker (Catostomus ardens); or

(v) Redside shiner (Richardsonius batteatus).

(b) The division may authorize a person to harvest or sell overabundant nuisance game species, as determined by the division.

(c) The certificate of registration shall identify those species of protected aquatic wildlife that may be harvested or sold.

(2) Any species of protected aquatic wildlife caught that is not authorized for harvest must be immediately returned alive and unharmed to the water from which it was harvested.

R657-14-8. Prohibited Nongame Species.

The following species of protected aquatic wildlife may not be harvested, and if caught must be immediately returned alive and unharmed to the water from which it was taken:

(1) bonytail (Gila elegans);

(2) bluehead sucker (Catostomus discobolus);

(3) Colorado pikeminnow (Ptychocheilus lucius);

(4) flannelmouth sucker (Catostomus latipinnis);

(5) gizzard shad (Dorosoma cepedianum);

(6) grass carp (Ctenopharyngodon idella);

(7) humpback chub (Gila cypha);

(8) June sucker (Chasmistes liorus);

(9) least chub (Iotichthys phlegethontis);

(10) leatherside chub (Gila cypha);

(11) razorback sucker (Xyrauchen texanus);

(12) roundtail chub (Gila robusta);

(13) Virgin River chub (Gila robusta seminuda);

(14) Virgin spinedace (Lepidomeda mollispinis); and

(15) woundfin (Plagopterus argentissimus).

R657-14-9. Harvest Hours.

(1) Protected aquatic wildlife may be harvested from 5 a.m. to 10 p.m. year-round, unless otherwise specified on the certificate of registration.

(2) When the harvest season is suspended or closed, all harvest activity shall cease at official sunset.

R657-14-10. Identification of Traps and Nets.

(1) A metal tag or plate stamped with the owner's name and certificate of registration number must be securely attached to each seine, trap and net.

(2) Any improperly tagged seine, trap, or net may be seized by the division.

R657-14-11. Transportation, Purchase, or Sale of Live Protected Aquatic Wildlife.

(1) A person may not have in possession any live species of protected aquatic wildlife, except as provided in Rules R657-3 or R657-16.

(2) A person may not purchase any live protected aquatic wildlife from or sell any live protected aquatic wildlife to any person or entity who has not obtained a certificate of registration to possess or sell live protected aquatic wildlife, except as provided in Subsection R657-14-3(3).

R657-14-12. Certified Bait Dealers.

(1) The division may authorize a person to harvest or sell designated species of protected aquatic wildlife for use as dead fishing bait, including cut baits.

(2)(a) The division may allow a person to harvest, possess, or sell the species of protected aquatic wildlife for use as dead fish bait as provided in Section R657-14-7.

(b) The division shall not allow a person to harvest, possess, or sell any other protected aquatic wildlife for use as dead fish bait except as provided in Section R657-14-7.

(3)(a) A person may not purchase dead fish bait from any

person who has not obtained a certificate of registration from the division.

(b) Subsection (a) does not preclude commerce with out-of-state sellers of dead, prepared fish baits if the dead fish bait is clearly labeled as to its origin.

(4)(a) Only a person who has obtained a certificate of registration from the division may harvest, sell, or trade protected aquatic wildlife for use as fish bait.

(b) Any protected aquatic wildlife sold for use as fish bait must be packaged in a suitable container, and have securely attached a clearly discernable business label on each package that provides the brand or business name, business address, type of product, and certificate of registration number.

(5) A person may not purchase or sell any dead fish bait that does not have a label attached to the package as provided in Subsection (4)(b).

R657-14-13. Commercial Seining.

(1) The division may issue a certificate of registration authorizing a person to harvest designated species of protected aquatic wildlife by seining.

(2)(a) Three helper cards are issued with the certificate of registration.

(b) Additional helper cards may be obtained from the division.

(3) A seiner may harvest any species of nongame fish listed under Section R657-14-7, and any overabundant game species as determined by the division and indicated on the certificate of registration.

(4) A seiner may harvest or sell protected aquatic wildlife for use as dead fish bait as provided in Section R657-14-12, if authorization is obtained from the division and indicated on the certificate of registration.

R657-14-14. Violations.

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, or any Wildlife Board Order may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

KEY: game laws, bait dealers, commercialization of aquatic wildlife

September 4, 2002 **23-14-18**
Notice of Continuation June 15, 2017 **23-14-19**
23-13-13
23-15-7
23-15-8
23-15-9
23-14-3

R698. Public Safety, Administration.
R698-8. Local Public Safety and Firefighter Surviving Spouse Trust Fund.
R698-8-1. Purpose.

The purpose of this rule is to establish procedures for implementation of the Public Safety Officer and Firefighter Line-of-Duty Death Act.

R698-8-2. Authority.

This rule is authorized by Section 53-17-301.

R698-8-3. Definitions.

(1) The terms used in this rule are defined in Section 53-17-102.

(2) In addition:

(a) "department" means the Utah Department of Public Safety; and

(b) "participating agency" means an employer defined in Section 53-17-102 that has elected to participate in the trust fund.

R698-8-4. Participation Process.

(1) An employer that elects to participate in the trust fund shall submit no later than June 30, 2017:

(a) a cost sharing agreement form approved by the board;

(b) a certificate of eligible employees form approved by the board that identifies the number of eligible members as of March 31, 2017; and

(c) the required annual premium payment as determined by the board.

(2) The information described in Subsection R698-8-4(1) shall be addressed to the Commissioner's office of the Department of Public Safety, Attn. Trust Fund.

(3) The cost sharing agreement form shall contain the following:

(a) the name, address and phone number of the employer; and

(c) the name, mailing address and signature of the agency administrator completing the cost sharing agreement form.

R698-8-5. Annual Payment of Premiums.

(1) A participating agency shall continue to submit annual premium payments to the department in order to continue to participate in the trust fund.

(2) Annual premium payments shall be submitted to the department no later than June 30 of each year and shall be accompanied by an updated certificate of eligible employees form that identifies the number of eligible members as of March 31.

(3) If a participating agency fails to submit a premium payment as required in this subsection, the department shall notify the agency administrator who completed the cost sharing agreement of the delinquency in premium payments.

(4) If after receipt of a delinquency notice the participating agency fails to submit the annual premium payment within 30 days of the date of the notice, the department shall:

(a) notify the agency administrator who completed the cost sharing agreement that the employer is no longer considered to be a participant in the trust fund; and

(b) include in the notice the total amount of premiums paid by the employer into the trust fund.

R698-8-5. Reimbursement of Health Coverage Costs.

(1) In the event of a line-of-duty death of a member, a participating agency may receive reimbursement for payment of health coverage premiums and contributions made to a health savings account as described in Section 53-17-201.

(2) To receive reimbursement for payments described in Subsection (1), the participating agency shall submit to the department:

(a) a request for reimbursement on a form approved by the board upon initial request; and

(b) a copy of the statement provided by the group health plan that includes the participating agency's costs for coverage upon initial request and each month thereafter.

(3) The request for reimbursement form shall include:

(a) the name of the spouse for whom coverage is provided; and

(b) the name and date or birth for each child under the age of 26 for whom coverage is provided.

(4) If the member did not have a living spouse at the time of death, the request for reimbursement form shall include the name and date of birth for each child under the age of 26 for whom coverage is provided.

R698-8-6. Discontinuation of Reimbursement of Health Coverage Costs.

(1) In the event of the death of a spouse or child for whom coverage is provided under Section 53-17-201, the participating agency shall submit to the department:

(a) a form approved by the board that includes;

(i) the name of the spouse or child that is deceased;

(ii) the individual's date of birth; and

(iii) the date of the individual's death.

(2) Upon receipt of the form described in Subsection (1), the department shall discontinue reimbursement of health coverage costs from the trust fund for the deceased individual.

(3) If reimbursement is being paid from the trust fund for health coverage costs to an employer for a child under the age of 26, reimbursement will be automatically discontinued when the child reaches the age of 26.

KEY: line-of-duty death, cost sharing agreement, surviving spouse trust fund
June 7, 2017 53-17-301(5)

R698. Public Safety, Administration.
R698-9. Utah Law Enforcement Memorial Support Restricted Account.
R698-9-1. Purpose.

The purpose of this rule is to establish procedures by which an organization may apply to the department to receive funds under Section 53-1-120.

R698-9-2. Authority.

This rule is authorized by Section 53-1-120(7) which provides that the commissioner shall make rules regarding the procedures for an organization to apply to receive funds from the account.

R698-9-3. Definitions.

(1) The terms used in this rule are defined in Section 53-1-102.

(2) In addition:

(a) "awarded funds" means the funds appropriated by the department from the account;

(b) "restricted funds" means the funds appropriated to the department from the account;

(c) "the account" means the Utah Law Enforcement Memorial Support Restricted Account; and

R698-9-4. Application Process.

(1) An organizations that wishes to receive awarded funds must submit an application to the commissioner.

(2) The application must contain the following:

(a) verification that the organization is a charitable organization that qualifies for tax exempt status under Internal Revenue Code Section 501(c)(3);

(b) a statement indicating that a primary part of the organization's mission is to support the operation and maintenance of the Utah Law Enforcement Memorial;

(c) a detailed description of how the organization intends to spend the awarded funds to support the operation and maintenance of the Utah Law Enforcement Memorial; and

(d) documentation of how the organization spent any awarded funds that were previously appropriated to the organization.

(3)(a) All applications must be submitted before July 1 in order to be eligible for awarded funds from the current fiscal year.

(b) If no applications are received by July 1, applications submitted after July 1 will be reviewed and considered on a case by case basis.

R698-9-5. Distributions and Prioritization of Awards.

(1) The commissioner shall review any applications that have been submitted and determine which organization will receive awarded funds based upon the following criteria:

(a) which organization's intended use of the awarded funds will have the broadest application or meet the greatest need; and

(b) whether the organization used previously awarded funds in the manner for which they originally sought the funds.

(2) The commissioner shall distribute all restricted funds in the account each year to one or more qualified organizations.

KEY: Utah Law Enforcement Memorial Support Restricted Account
June 7, 2017 53-1-120(7)

R704. Public Safety, Emergency Management.
R704-2. Statewide Mutual Aid Act Activation.
R704-2-1. Purpose.

The purpose of this rule is to provide procedures for jurisdictions activating the Statewide Mutual Aid Act (SMAA) and for persons acting as agents of the state to use in mobilizing or demobilizing available assets in response to an intrastate or interstate disaster as provided in Title 53, Chapter 2a, Part 4, Emergency Management Assistance Compact.

R704-2-2. Authority.

This rule is authorized by Section 53-2a-104.

R704-2-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-2a-102, 53-2a-203, and 53-2a-302.

(2) In addition:

(a) "agent of the state" means any person designated to represent the state;

(b) "authorized representative" means an officer or employee from a participating jurisdiction empowered to request, offer, or provide assistance on behalf of the chief executive officer;

(c) "committee" means the Statewide Mutual Aid Committee;

(d) "division" means the Utah Division of Emergency Management;

(e) "EMAC" means Emergency Management Assistance Compact, Utah Code Ann. 53-2a-402;

(f) "EMAC coordinator" means a designated division representative functioning as the coordinator of all Emergency Management Assistance Compact activities and actions between the states;

(g) "emergency manager" means a person designated by a jurisdiction to oversee preparedness, emergency or disaster response, mitigation, and recovery for its community;

(h) "Form 101," SMAA Mission Request Form, is a required document used to request resources;

(i) "Form 102A," Agent of the State of Utah - EMAC Agreement, is a required document that outlines liability, benefits, and financial responsibilities when deploying resources to another state;

(j) "Form 102B," Agent of the State of Utah - SMAA Agreement, is a required document that outlines liability, benefits, and financial responsibilities associated with serving as an agent of the state;

(k) "Form 103," SMAA Pre-deployment Checklist for Personnel, is an optional document that lists preparation steps for deployment;

(l) "Form 104," SMAA Mobilization Sheet, is an optional document that outlines the steps and processes involved with deployment;

(m) "Form 105," SMAA Personnel Location, is an optional tracking tool for deployed personnel who are serving an SMAA mission assignment;

(n) "Form 106," SMAA Resource Availability Log, is an optional log that identifies available resources offered by supporting agencies in response to an event;

(o) "Form 107," SMAA Resource Tracking Form, is an optional tracking tool for resources being utilized under an SMAA mission;

(p) "Form 108," SMAA Personnel Demobilization Schedule, is a required tracking tool for personnel being released from their assigned mission duties;

(q) "Form 109," SMAA Demobilization/Return of Assets Guidelines, provides guidelines for the responding jurisdictions to use when tracking assets used in an incident or event;

(r) "Form 110," SMAA Intergovernmental Reimbursement Form, is a required form that a jurisdiction uses to request reimbursement from the requesting jurisdiction;

(s) "Form 111," SMAA After Action/Corrective Action Report Survey, is a form that summarizes and analyzes performance in both exercise and actual events for those who act as an agent of the state. It may also evaluate achievement of the selected exercise objectives and demonstration of the overall capabilities being exercised;

(t) "Form 112," SMAA Demobilization Checklist, is an optional document that outlines the steps to follow in preparing to depart;

(u) "Form 113," SMAA Activation Agreement, is a required document that shows a jurisdiction's intent to activate the SMAA;

(v) "Form 114," SMAA Checklist for Requesting Reimbursement, is a list of the required steps to request reimbursement after the mission is complete;

(w) "Form 115," Resource Expense Summary, is a required document used to track expenditures while an agent of the state;

(x) "ICS Form 209," Incident Status Summary, is a form used for reporting information on significant incidents that requires inter-agency or intra-agency resource coordination;

(y) "ICS Form 221," Demobilization Checklist, is a FEMA form for tracking resources as they are released from deployment and return to their responding jurisdiction;

(z) "jurisdiction" means a participating political subdivision as defined in subsection 53-2a-302(2);

(aa) "local to local" means assistance between jurisdictions that do not utilize coordination from the state;

(bb) "mission number" means an assigned number that identifies a mission;

(cc) "SMAA" means Statewide Mutual Aid Act, Utah Code Ann. 53-2a-301 through 310;

(dd) "SMAA coordinator" means a designated division representative functioning as the coordinator of Statewide Mutual Aid Act activities and actions between the participating jurisdictions when requesting assistance of the State;

(ee) "state EOC" means the State of Utah Emergency Operations Center facility operated by the division which assists state agencies and jurisdictions in coordinating information and resources when local emergency response and recovery resources require supplementation; and

(ff) "state EOC manager" means a person designated to manage the State Emergency Operation Center.

R704-2-4. Requests for Disaster Assistance in a State of Emergency.

(1) When seeking to utilize the statewide mutual aid system for an emergency or disaster event, the chief executive officer or emergency manager of the requesting jurisdiction shall contact the division director or designee after they have made a written or oral declaration of emergency pursuant to Sections 53-2a-206 or 53-2a-208.

(a) The chief executive officer or designee of the requesting jurisdiction shall submit Form 101 to the responding jurisdiction within 24 hours of seeking assistance from the system for state resources or to receive assistance coordinating local to local assistance.

(2) Upon request by the requesting jurisdiction for state assistance, the SMAA coordinator or state EOC manager shall coordinate services and resources for the emergency or disaster event and shall:

(a) assign a mission number;

(b) document information; and

(c) seek needed equipment and personnel from a participating jurisdiction.

(3) Once a responding jurisdiction that is available to render aid has been identified, the participating jurisdictions shall complete and sign Form 113.

(a) In urgent circumstances, the requesting jurisdiction and the responding jurisdiction may initially enter into a verbal agreement, but the agreement shall be memorialized in writing and signed by both jurisdictions no later than 48 hours after the verbal agreement.

(b) If unanticipated circumstances arise during the emergency or disaster event, the requesting and responding jurisdictions may amend or supplement Form 101.

(c) Any amendments or supplements to Form 101 shall be acknowledged by the participating jurisdictions with authorizing signatures.

R704-2-5. Agent of the State.

(1) At the request of the division, a jurisdiction may agree to provide an employee with the skills and expertise desired to be deployed as an agent of the state for the purpose of rendering intrastate or interstate aid.

(a) The governing authority of the employee serving as an agent of the state shall submit to the division either Form 102A or Form 102B in response to an intrastate or interstate emergency or disaster.

(b) The responding jurisdiction's employee shall remain an employee of the responding jurisdiction except that the supervision of his or her duties during the period of assignment may be governed by agreement between the responding jurisdiction and the requesting jurisdiction and shall be entitled to the same salary and benefits to which they would otherwise be entitled to from the responding jurisdiction.

(c) The division assumes no responsibility for the responding jurisdiction's employee other than the coordination of their travel arrangements and lodging and per diem expenses, except in exigent circumstances.

(d) Upon completion of a mission, the agent of the state shall submit a brief summary of the services provided by the responding jurisdiction, Form 110, and Form 115 to the division. The division shall then reimburse the responding jurisdiction for the eligible expenses stated in subsection (c) incurred by the agent of the state.

R704-2-6. Procedures for Providing Mutual Aid.

(1) When providing assistance pursuant to the SMAA, the requesting jurisdiction shall control and supervise the personnel, equipment, and resources of any responding jurisdiction.

(a) The requesting jurisdiction shall advise supervisory personnel of the responding jurisdiction concerning assignments or mission tasks.

(b) While providing mutual aid, the incident commander or requesting jurisdiction shall:

(i) maintain daily personnel time records, material records, and a log of equipment hours;

(ii) oversee the operation, control, and maintenance of the equipment and other resources furnished by the responding jurisdiction; and

(iii) report work progress to the responding jurisdiction.

(c) The responding jurisdiction shall notify the requesting jurisdiction if the requested resources are donated or loaned.

(d) The responding jurisdiction may recall its personnel subject to providing a minimum of 24 hours advance notice of intent to withdraw personnel or resources from the requesting jurisdiction, unless circumstances make 24 hours advance notice impracticable or unreasonable.

(2) The responding jurisdiction may release personnel or resources for SMAA assistance after it has determined that its remaining resources are adequate to support its own normal operations.

(a) The requesting jurisdiction shall be responsible for providing food and housing for the personnel from the responding jurisdiction, beginning with the time of arrival at the designated location and until departure, unless otherwise indicated in Form 101.

(b) The requesting jurisdiction may request personnel who are self-sustaining, but must specify what resources it is able to provide to the responding jurisdiction.

(3) The requesting jurisdiction is responsible for coordinating communication between its own personnel and the personnel of the responding jurisdiction.

(a) The responding jurisdiction shall furnish equipment to communicate among its respective operating units.

(4) Each participating jurisdiction shall maintain its own equipment in safe and operational condition.

(5) The division shall receive and maintain an inventory of the state and local services, equipment, supplies, personnel, and other resources related to participation in the SMAA.

R704-2-7. Pre-Mobilization of Resources.

(1) The requesting jurisdiction shall submit Form 101 to the responding jurisdiction to be kept as documentation. The required information includes:

(a) type of resources requested; and

(b) quantity of resources requested.

(2) The responding jurisdiction shall confirm the following incident information:

(a) name of incident;

(b) location of incident;

(c) date and time the incident was declared; and

(d) current time of deployment of resources requested.

(3) The SMAA coordinator or EOC manager shall provide the following to a responding employee acting as an agent of the state:

(a) situation briefing;

(b) pre-deployment checklist; and

(c) travel information.

(4) A requesting jurisdiction shall first use local agency resources prior to requesting resources through SMAA.

(5) The requesting jurisdiction shall specify a location for a staging area and assign a person to ensure the resources are ready to be released.

(a) If the requested resources are for equipment, the responding jurisdiction shall confirm its readiness to be deployed.

(6) The responding jurisdiction shall perform a communications check with all assigned communications equipment, prior to departure, to ensure compatibility with the requesting jurisdiction.

R704-2-8. Mobilization of Resources.

(1) Deployed personnel and resources from a responding jurisdiction shall notify the point of contact for both the requesting jurisdiction and the responding jurisdiction of their arrival at the point of assignment or staging area.

(2) The requesting jurisdiction shall notify the responding jurisdiction if there is a change in assignments or locations for the requested resources.

(3) The division shall use Form 104 for each deployment of resources if state assistance was requested.

(4) Deployed personnel may be tracked by using Form 105.

(a) Deployed resources and available resources may also be tracked for the SMAA through Forms 106 and 107.

(5) The requesting jurisdiction shall provide a mission briefing to the deployed personnel from the responding jurisdiction.

R704-2-9. Demobilization of Resources.

(1) The requesting jurisdiction will be responsible for demobilization.

(a) After termination of the mission time, the requesting jurisdiction shall release resources and return those resources to

the responding jurisdiction according to the terms of Form 104, unless the circumstances of the incident make compliance with the terms impracticable or impossible.

(b) The requesting jurisdiction shall debrief all personnel assigned to the incident prior to departure. The debriefing shall include:

(i) confirmation of personnel's travel arrangements; and

(ii) review of personnel's responsibilities for demobilization.

(2) Equipment issued to personnel from a responding jurisdiction shall be returned, and all documentation shall be completed and submitted as required in Form 109.

(3) Personnel from the responding jurisdiction shall notify the requesting jurisdiction of the safe arrival of the deployed resources upon returning to their home jurisdiction.

(4) The responding jurisdiction's returning personnel shall complete and submit Form 111 to the division for all SMAA deployments if acting as an agent of the state.

R704-2-10. Reimbursement Procedures for Rendering Mutual Aid.

(1) A responding jurisdiction that seeks reimbursement shall provide notice to the requesting jurisdiction within 30 days of the termination of statewide mutual aid assistance.

(a) The notice of intent should include the following:

(i) Form 110;

(ii) a brief summary of the services provided by the responding jurisdiction; and

(iii) contact information for the designated person or financial representative responsible for the request.

(b) The responding jurisdiction shall reference the assigned mission number when seeking reimbursement from a requesting jurisdiction.

(c) In addition to the notice of intent to seek reimbursement, the responding jurisdiction shall provide the requesting jurisdiction and the SMAA coordinator, if the state was involved, with a copy of all documents related to deployment and reimbursement, including:

(i) Form 101 and any amendments or supplements;

(ii) Form 110;

(iii) Form 113;

(iv) Form 115;

(v) any notices of dispute; and

(vi) any payments made by the requesting jurisdiction in response to the responding jurisdiction's request.

(2) The requesting jurisdiction shall acknowledge receipt, in writing, of the notice of intent to seek reimbursement from the responding jurisdiction.

(3) The SMAA coordinator shall record all documents related to deployment and reimbursement from the requesting jurisdiction personnel acting as an agent of the state.

(a) The SMAA coordinator shall coordinate with both jurisdictions to encourage and facilitate proper reimbursement, if needed.

(b) The SMAA coordinator may provide reminder notices in anticipation of due dates including the notifications required under Subsections (3) and (4).

(c) The division may designate a financial representative to monitor and provide guidance to participating jurisdictions concerning reimbursement.

(4) When the notification requirements of Subsection (3) have been met, the responding jurisdiction may submit a request for reimbursement to the requesting jurisdiction within 60 days of the termination of statewide mutual aid assistance.

(a) The request for reimbursement shall include a cover letter that summarizes the assistance provided under Form 101.

(b) The request for reimbursement shall also include the following:

(i) a comprehensive invoice listing resources provided with the total cost;

(ii) Form 110;

(iii) Form 115; and

(iv) supporting documentation including copies of individual invoices, travel claims, vouchers, and other similar items.

(c) The request for reimbursement shall also include a copy of any amendments or supplements to the original Form 101 and accompanied by the itemized costs and respective supporting documents.

(5) The requesting jurisdiction shall reimburse the responding jurisdiction no later than 30 days from the date of receiving the request under Subsection (4) unless:

(a) either jurisdiction provides written notice to the other jurisdiction that disputes the reimbursement costs, or alleges noncompliance with the applicable procedures and criteria; or

(b) the jurisdictions agree to an extension for reimbursement.

(6) Disputes regarding reimbursement shall first be addressed between the responding jurisdictions and requesting jurisdiction within 30 days after either party provides notice of the dispute.

(a) The jurisdictions shall make a reasonable effort to resolve the dispute during the 30 day period.

(7) If a dispute cannot be resolved by the jurisdictions within 90 days after the notice of dispute, either party may submit the dispute to the committee.

(a) Requests to the committee must be made no later than 30 days after the end of 90-day period described in Subsection (7).

(b) The requesting jurisdiction shall submit the following documents to the committee for review:

(i) Form 110;

(ii) a concise narrative explaining the dispute; and

(iii) the documents listed in Subsections (4)(a) through (c).

(c) The requesting and responding jurisdictions may submit other supporting evidence that is relevant to the dispute.

(d) The committee has 30 days to schedule the matter for a hearing.

(e) The committee chairperson shall select a quorum of seven committee members to participate in the hearing.

(f) Hearings are designated as informal adjudications pursuant to Utah Code Ann. Section 63G-4-202.

(g) The committee, by majority vote, shall issue a final written decision within 30 days of the hearing that includes findings of fact and its reasons for its decision.

R704-2-11. Waiver of Reimbursement.

(1) A responding jurisdiction may waive, in writing, any rights to reimbursement under Section 53-2a-308.

(2) Waiver of any reimbursable right shall specify each item waived in order to provide notice to the requesting jurisdiction and the division, if applicable.

(3) Waiver of any reimbursable right shall be delivered to the requesting jurisdiction with a copy delivered to the division, if applicable, no later than 90 days after the termination of statewide mutual aid assistance.

R704-2-12. Reimbursable Expenses.

(1) The requesting jurisdiction shall reimburse the responding jurisdiction for costs related to deployment pursuant to Form 101.

(a) In order to be eligible for reimbursement, all costs must be documented and sufficiently detailed in Form 101 and include supporting documentation.

(b) A jurisdiction that fails to submit all required reimbursement forms by due dates listed in this rule forfeits its right to reimbursement.

(2) Unless otherwise specified in Form 101, the

responding jurisdiction shall continue to compensate its personnel according to its employment policies at the time of the event.

(a) The requesting jurisdiction shall reimburse the responding jurisdiction for agreed upon costs and expenses incurred during the event.

(3) The requesting jurisdiction shall reimburse the responding jurisdiction for use, damage, or loss of any equipment that the responding jurisdiction provided during the event, exercise, or drill.

(a) If practicable and at the request of the responding jurisdiction, the requesting jurisdiction may provide fuels, miscellaneous supplies, and minor repairs.

(4) Unless damage is caused by gross negligence, bad faith, or willful misconduct by the responding jurisdiction, the requesting jurisdiction shall reimburse the responding jurisdiction for all materials and supplies exhausted or damaged during the event.

(a) The parties may agree that the requesting jurisdiction may replace equipment, materials, and supplies with like, kind, and quality as determined by the responding jurisdiction.

KEY: Statewide Mutual Aid Act, reimbursement
June 9, 2017 53-2a-104(3)

R704. Public Safety, Emergency Management.
R704-3. Local Government Emergency Response Loan Program.
R704-3-1. Authority.

This rule is authorized by Section 53-2a-609.

R704-3-2. Purpose.

The purpose of this rule is to establish criteria, procedures, and requirements for the administration of the Local Government Emergency Response Loan Fund described in Section 53-2a-607.

R704-3-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-2a-102, 53-2a-203, and 53-2a-602.

(2) In addition to the terms referenced in Subsection R704-3-3(1):

(a) "fund" means the Local Government Emergency Response Loan Fund;

(b) "loan" means a loan provided by the Division from the Local Government Emergency Response Loan Fund to an eligible local government entity for costs incurred for providing emergency disaster services as defined in Section 53-2a-602.

R704-3-4. Application.

(1) A local government entity wishing to apply for a loan from the fund shall submit to the Division:

(a) an application on a form approved by the Division;

(b) documentation that establishes a local disaster declaration for which the loan is being requested;

(c) documentation certified by the entity's chief financial officer stating that the entity has:

(i) established a local government disaster fund; and

(ii) deposited a minimum average of 5% of total estimated revenues into a local government disaster fund established in accordance with Section 53-2a-605 for at least five fiscal years previous to the date the disaster is declared; and

(d) documentation that establishes costs incurred by the local government entity for disaster recovery and supports the dollar amount of the loan being requested.

R704-3-5. Eligibility Review.

(1) The Division shall determine if the applicant:

(a) has fulfilled the application requirements in Section R701-3-4; and

(b) meets the eligibility criteria in Sections 53-2a-607 and 53-2a-608.

R704-3-6. Prioritization of Awards for Loan Applications.

(1) In accordance with Subsection 53-2a-609(2), the Division will consider the following criteria in prioritizing and awarding loans:

(a) the total account balance available in the fund;

(b) the severity or scale of the disaster or emergency that has been declared;

(c) the severity of the impact to local government entities that have submitted loan applications; and

(d) other sources of funding that might be available to the local government entity for the purpose of disaster recovery; and

(e) the likelihood the loan amount will be paid repaid in accordance with Section 53-2a-608 based on the local government entity's bond rating.

R704-3-7. Making Loans.

(1) Loan funds shall be obligated after all documents to secure a loan are complete, processed, approved, and appropriately signed by the applicant and the director.

(2) Disbursement of loan proceeds to the borrower will take place within 10 business days of the closing date of the loan.

R704-3-8. Servicing the Loans, Loan Repayment and Late Penalties.

(1) Loans will be serviced by the Division of Finance.

(2) Loan repayment schedules are outlined in Section 53-2a-608.

(3) The initial installment payment is due on a date established by the Division.

(4) Subsequent installment payments are due on the tenth day of each month.

(5) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(6) Penalties for late loan payments shall be:

(a) ten percent of the payment due;

(b) assessed and payable on payments received by the Division more than 15 days after the due date;

(c) assessed only once per scheduled payment; and

(d) noticed to the borrower with the amounts of penalty and the total payment due.

(7) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Division by methods other than the U.S. Postal Service.

(8) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(9) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R704-3-9. Recovering on Defaulted Loans.

(1) Loans may be considered in default when two consecutive payments are past due by 30 days or more.

(2) If the loan is determined to be in default under Subsection R704-3-9(1), the Division or the Division of Finance may declare the full amount of the defaulted loan, penalty and interest immediately due.

(3) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

KEY: disaster recovery loans, local government disaster loans
June 7, 2017 53-2a-607
53-2a-608
53-2a-609

R710. Public Safety, Fire Marshal.
R710-2. Rules Pursuant to the Utah Fireworks Act.
R710-2-1. Purpose.

The purpose of this rule is to establish the minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

R710-2-2. Authority.

This rule is authorized by Section 53-7-204.

R710-2-3. Definitions.

(1) "AHJ" means authority having jurisdiction, and includes such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

(2) "Aerial device" means a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.

(3) "Bin" means a container or enclosed space for storing or displaying aerial fireworks that would reasonably limit the effect of the pyrotechnic material if ignited, and would not allow rapid spread of the fire to areas away from the immediate area of ignition.

(4) "Constant Visual Supervision" means that visual supervision is continually occurring or regularly recurring.

(5) "Covered fuse" means a fuse or designed point of ignition that is protected against accidental ignition by contact with a spark, smoldering item or small open flame.

(6) "Designated Store Employee" means a specific employee assigned that title or the employee who works at the work station where the measurement was taken to the aerial fireworks display.

(7) "Direct Line of Sight" means there is a clear unobstructed view to the aerial fireworks display.

(8) "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

(9) "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

(10) "ICC" means International Code Council, Inc.

(11) "IFC" means International Fire Code, 2015 edition.

(12) "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

(13) "NAFAA" means the North American Fire Arts Association.

(14) "NFPA" means National Fire Protection Association.

(15) "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

(16) "Person" means an individual, company, partnership or corporation.

(17) "Pre-packaged means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

(18) "Resale" means the act of reselling class B or C explosives to a new party.

(19) "SFM" means the State Fire Marshal.

(20) "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

(21) "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

R710-2-4. General Requirements.

(1) No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

(2) If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

(3) All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

(4) Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

(5) A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

(6) Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

(7) All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

(8) Storage of class C common state approved explosives shall not be located in residences to include attached garages.

(9) "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

(10) A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

(11) All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

(12) Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units with covered fuses.

R710-2-5. Indoor Sales.

(1) Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

(2) In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

(3) In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

(4) Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

(5) Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

(6) Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

(7) Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-6. Temporary Stands, Trailers and Tents.

(1) Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 31.

(2) The general public shall not be allowed to enter a temporary stand or trailer.

(3) Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

(4) All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

(5) The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

(6) Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

(7) If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry.

(a) Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

(8) No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

(9) Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements.

(a) All heaters shall be approved by the AHJ.

(10) All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the AHJ.

R710-2-7. Display, Sale, and Signage of Aerial Devices.

(1) In addition to those requirements in Sections R710-2-4 through R710-2-6, all aerial devices shall be packaged and displayed for sale in a manner that would provide public safety by completing one of the following:

(a) provide constant visual supervision by direct line of sight by a designated store employee where the aerial display is not more than 25 feet from the designated employee's work station;

(b) provide constant visual supervision by direct line of sight by a store employee when all of the following requirements are met:

(i) the aerial display shall not be more than 40 feet from the designated employee's work station.

(ii) the aerial devices are restrained by using at least one of the following methods:

(A) the aerial devices are placed in a bin or bins that meets the definition stated in Section R710-2-3; or

(B) the aerial device shall have an additional layer of packaging requiring that the additional layer of packaging be punctured or torn to gain access to the fuse cover; or

(C) place the aerial devices in an area that is physically separated from the public so that the customer cannot handle the aerial devices without the assistance of an employee.

(2) Where aerial devices are sold in permanent structures, the aerial device display shall be placed in a location that gives the customer access to the aerial devices just before the customer checks out and exits the store.

(3) Wherever aerial devices are sold, there shall be signage with a minimum font of one inch, to warn and inform the customer of the dangers of aerial devices and the signage shall state the following:

(a) aerial fireworks are designed to travel up to 150 feet into the air and then explode;

(b) aerial fireworks shall be placed on a hard level surface outdoors, in a clear and open area prior to ignition;

(c) anyone under the age of 16 shall not handle or operate aerial fireworks;

(d) ignition of aerial fireworks shall be a minimum of 30 feet from any structure or vertical obstruction;

(e) aerial fireworks shall not be ignited within 150 feet of the point of sale; and

(f) please read and obey all safe handling instructions before using aerial fireworks.

R710-2-8. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.

(1) Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

(2) Application for a license shall be signed by the applicant.

(3) Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

(a) Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

(4) Application for renewal of license shall be made before January 1st of each year.

(a) Application for renewal shall be made in writing on forms provided by the SFM.

(5) The SFM may refuse to renew any license pursuant to Section R710-2-10.

(a) The applicant, upon such refusal, shall also have those rights as are granted by Section R710-2-10.

(6) Every licensee shall notify the SFM, in writing, within 30 days of any change of his address or location.

(7) No licensee shall conduct his licensed business under a name other than the name which appears on his license.

(8) No license shall be issued to any person as licensee who is under 21 years of age.

(9) The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

(10) The applicant shall indicate on the application which license the applicant wishes to apply for:

(a) Display Operator;

(b) Special Effects Operator;

(c) Flame Effects Operator; or

(d) Flame Effects Performing Artist.

(11) Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

(a) successfully passing an open book written examination and obtaining a minimum grade of 70%;

(i) the applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination;

(b) submit written verification with the application of having completed a display operators safety class, a special

effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM; and

(c) submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

(12) Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

(a) Successfully passing an open book written examination and obtaining a minimum grade of 70%.

(b) The applicant is allowed to use the statute, the administrative rule, NFPA 160, and the Artisan and Performer Safety Standards prepared by the SFM.

(c) Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

(d) Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

(13) Every holder of a valid license identified in Subsections R710-02-7(11) and R710-02-07(12) shall take a re-examination every five years, from date of original issuance.

(14) Applicants seeking an original license as stated in Subsection R710-2-8(11), may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days.

(a) By the end of the 45-day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

(15) At the end of the five-year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination.

(a) The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date.

(b) The re-examination shall focus on the changes in the last 5 years to the adopted standards.

(c) The license holder is responsible to complete the re-examination and return it to the division in time to renew and also comply with the requirements listed in Subsection R710-2-8(16).

(16) After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

(a) complete one show or performance annually;

(b) attend an operator safety class or flame effects performing artist meeting annually; and

(c) work with another licensed display operator, special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

(17) When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Subsections R710-2-8(11) and R710-2-8(12).

(18) Every person who wishes to secure a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

(19) Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten working days after the conclusion of any show and send it to the State Fire Marshal.

(a) If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.

R710-2-9. Importer or Wholesaler License.

(1) Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

(2) Application for a license shall be signed by the applicant.

(a) If the application is made by a partnership, it shall be signed by all partners.

(b) If the application is made by a corporation or association, it shall be signed by a principal officer.

(3) Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

(a) Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

(4) The SFM may refuse to renew any license pursuant to Section R710-2-10.

(a) The applicant, upon such refusal, shall also have those rights as are granted by Section R710-2-10.

(5) Every licensee shall notify the SFM within 30 days of any change of address or location.

(6) No licensee shall conduct his licensed business under a name other than the name which appears on his license.

(7) No license shall be issued to any person as licensee who is under 21 years of age.

(8) The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

R710-2-10. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

(a) the person or applicant is not the real person in interest;

(b) the person of applicant provides material misrepresentation or false statement on the application;

(c) the person or applicant refuses to allow inspection by the AHJ;

(d) the person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class;

(e) the person or applicant has been convicted of one or more federal, state or local laws;

(f) failure to accurately complete the After Action Report;

(g) the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules;

(h) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration; or

(i) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

(3) A person may request a hearing on a decision made by the AHJ, by filing an appeal to the board within 20 days after receiving final notice from the AHJ.

(4) All adjudicative proceedings, other than criminal

prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose license or certificate of registration has been revoked.

(a) After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board.

(b) After the hearing, the board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

R710-2-11. Amendments and Additions.

(1) The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses.

(2) IFC, Chapter 56, Sections 5601.2.1 and 5601.2.2 are deleted, and rewritten to read as follows:

(a) For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

(i) the retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored;

(ii) class C common state approved explosives shall not be stored in residences to include attached garages; and

(iii) The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

(A) in self storage units where the owner allows it;

(B) in a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business;

(C) in a locked or secured truck, trailer, or other vehicle at an approved location;

(D) in a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building;

(E) a wholesalers warehouse;

(F) an approved Group M occupancy;

(G) in a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction; or

(H) any other structure or location approved by the authority having jurisdiction.

(b) During all other periods of time, except those stated in Subsection R710-2-11(2)(a), the storage, use, and handling of fireworks are prohibited, except as follows:

(i) the storage and handling of fireworks are allowed as required in IFC, Chapter 56 and these rules; and

(ii) the use of fireworks for display is allowed as set forth in IFC, Chapter 56 and these rules.

R710-2-12. Fire Department Displays.

(1) As required in Subsection 53-7-223(1) and as allowed for fire departments in Subsection 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

(2) Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.

(3) Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display.

(a) A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

(4) Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in Section 53-7-224.

KEY: fireworks
September 13, 2016 53-7-204
Notice of Continuation May 2, 2017

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. Purpose.

The purpose of this rule is to establish the minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

R710-3-2. Authority.

This rule is authorized by Section 53- 7- 204.

R710-3-3. Definitions.

(1) "Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to "Ambulatory" may be approved under the conditions stated in Subsections R710-3-4(2)(h), R710-3-4(3)(f), or R710-3-4(4)(j).

(2) "Assisted Living Facility" means:

(a) a Type 1 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person;

(b) a Type 2 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent; or

(c) a Residential Treatment/Support Assisted Living Facility, which creates a group living environment for four or more residents contracted by the Division of Services to People with Disabilities and subject to licensure by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

(d) Assisted Living Facilities shall be classified by size as follows:

(i) "Type 1, 2, and Residential Treatment/Support Limited Capacity Facility" means an assisted living facility accommodating five or less residents, excluding staff.

(ii) "Type 1, 2, and Residential Treatment/Support Small Facility" means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

(iii) "Type 1, 2, and Residential Treatment/Support Large Facility" means an assisted living facility accommodating more than sixteen residents, excluding staff.

(3) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

(4) "Board" means Utah Fire Prevention Board.

(5) "Compromised Ambulatory Capacity" means physical or mental incapacitations that inhibit a persons ability to exit a facility unassisted.

(6) "IBC" means International Building Code.

(7) "ICC" means International Code Council, Inc.

(8) "IFC" means International Fire Code.

(9) "Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

(10) "Semi-independent" means a person who is:

(a) physically disabled but able to direct his or her own care; or

(b) cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

(11) "SFM" means State Fire Marshal.

R710-3-4. Amendments and Additions.

(1) General Requirements

(a) All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

(b) All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

(c) An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

(2) Type I Assisted Living Facilities

(a) Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

(b) Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(c) Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

(d) In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue opening as required in IFC, Chapter 10, Section 1030.

(e) In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

(f) Type I Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(g) Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(h) In a Type I Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

(3) Type II Assisted Living Facilities

(a) Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(b) Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

(c) Type II Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

(d) Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

(i) Type II Small Assisted Living Facilities licensed before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

(e) Type II Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2, and maintained in accordance with the IBC and IFC.

(i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick

response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

(f) In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

(4) Residential Treatment/Support Assisted Living Facilities

(a) Residential Treatment/Support Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

(b) Residential Treatment/Support Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(c) Residents in Residential Treatment/Support Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

(d) In Residential Treatment/Support Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue windows as required in IFC, Chapter 10, Section 1029.

(e) In Residential Treatment/Support Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

(f) Residential Treatment/Support Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(i) IFC, Chapter 9, Section 903.2.8 is amended to add the following: Exception: Residential Treatment/Support Assisted Living Facility classified as Group R-4, not more than 4500 gross square feet, and not containing more than 16 ambulatory, non-restrained residents, is allowed provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring.

(g) Residential Treatment/Support Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(h) Residential Treatment/Support Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

(i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

(j) In a Residential Treatment/Support Assisted Living Facility, residents with compromised ambulatory capacity that can demonstrate the ability to exit the facility unassisted in two minutes or less, and meet the requirements listed in Utah Administrative Code, R501-2-11, Emergency Plans, may receive approval from the Office of Licensing, Utah Department of Human Services, to remain in the facility as a resident.

(i) In those facilities where the Office of Licensing, Department of Human Services, determines that the resident cannot exit the facility unassisted in two minutes or less, the facility management shall complete one of the following:

(A) make accommodations, changes or enact an emergency plan that guarantees the exiting of the resident in two minutes or less;

(B) provide a staff to resident ratio of one to one on a 24 hour basis;

(C) install an approved automatic fire sprinkler system; or

(D) move the resident from the facility.

R710-3-5. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-6. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-7. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-8. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

(2) A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

(3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

(4) The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(5) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

(6) Reconsideration of the Boards decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

(7) Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: assisted living facilities
August 15, 2016 53-7-204
Notice of Continuation May 3, 2017

R710. Public Safety, Fire Marshal.

R710-7. Concerns Servicing Automatic Fire Suppression Systems.

R710-7-1. Purpose.

The purpose of this rule is to establish regulations governing those concerns that service Automatic Fire Suppression Systems. These rules apply to systems regulated by the state adopted editions of National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems.

R710-7-2. Authority.

This rule is authorized by Section 53-7-204.

R710-7-3. Definitions.

(1) "Annual" means a period of one year or 365 days.

(2) "Board" means Utah Fire Prevention Board.

(3) "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

(4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

(6) "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

(7) "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

(8) "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

(9) "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

(10) "N.F.P.A." means National Fire Protection Association.

(11) "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

(12) "Service" means a complete inspection of an automatic fire suppression system to include maintenance, repair, modification, testing, or cleaning, as set forth in the adopted N.F.P.A. standards.

(13) "System" means an Automatic Fire Suppression System.

(14) "SFM" means Utah State Fire Marshal or authorized deputy.

R710-7-4. Adoption of Codes.

(1) The following standards are adopted as code:

(a) the National Fire Protection Association, N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition;

(b) all existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system; and

(c) no person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless it meets the following:

(A) it complies with these rules; and

(B) it has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

R710-7-5. Licensing.

(1) No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

(2) Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

(3) Licenses shall be any one, or combination of the following:

(a) Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

(b) Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

(4) Application for a license to conduct business as an automatic fire suppression system concern shall be made in writing to the SFM on forms provided by the SFM.

(a) A separate application for license shall be made for each branch office, or separate place or business location of the applicant.

(b) The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance.

(i) The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage.

(ii) The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

(c) The application shall be signed by the applicant.

(i) If the application is made by a partnership, it shall be signed by all partners.

(ii) If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

(5) The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules.

(a) The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24-hours notice before the appointed inspection.

(b) The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained.

(c) The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

(6) Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license.

(a) Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

(7) Original licenses shall be valid for one year from the

date of issuance.

(a) Thereafter, each license shall be renewed annually and renewals shall be valid for one year from the previous date of expiration.

(b) No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(c) In the event that a license is not renewed prior to the expiration date, the applicant shall be required to apply for an original license with a new license number.

(8) Application for renewal shall be made as directed by the SFM.

(a) The failure to renew the license will cause the license and license number to become invalid.

(b) No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(c) A renewed license shall be valid for one year from the previous date of expiration.

(9) A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

(10) SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

(11) Every licensee shall notify the SFM, in writing, within 30 days, of any change of address or location of business.

(12) No licensee shall conduct the licensed business under a name other than the name or names which appear on the license.

(13) Every licensed concern shall, within 30 days of employment or termination of an employee or contracted agent, notify the SFM of the name, address, and certification number of that person.

(14) No license shall be issued to any person as licensee who is under 18 years of age.

(15) Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

(16) No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager.

(a) No license shall grant authorization to enforce the International Fire Code or these rules.

(17) No license issued pursuant to this section shall be transferred from one concern to another.

(18) Every license shall be identified by a number, delineated as H-number.

(a) Such number may only be transferred from one concern to another when approved by the SFM.

(19) The following minimum material and equipment requirements shall be maintained at each business location or vehicle of the applicant where servicing work is performed:

(a) calibrated scales with ability to:

(i) weigh gas cartridges to within 1/4 ounce of manufacturers specifications; and

(ii) weigh cylinders accurately for systems being serviced;

(b) manufacturers specifications for each system serviced;

(c) nitrogen pressure filling equipment;

(i) nitrogen supply;

(ii) pressure regulator - 750 p.s.i. minimum; and

(iii) filling adapters;

(d) wet and dry chemical systems;

(i) extinguishing agents, compatible with systems serviced;

(ii) fusible links;

(iii) safety pins;

(iv) an assortment of gaskets and o-rings compatible with systems serviced;

(v) gas cartridges as required according to manufacture's specifications;

(vi) current reference manuals, to include manufacture's service manuals; and

(vii) cocking or lockout tool;

(e) clean agent, halon and CO2 systems

(i) have access to, or meet the requirements for a U.L. approved filling station;

(ii) have available in inventory, or have immediate access to, detectors compatible with systems serviced;

(iii) calibration equipment such as electrical testers and detector testers;

(iv) control panel components;

(v) release valves; and

(vi) current reference manuals.

(f) This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

(20) Accurate records shall be maintained for five years by the licensee, of all service work performed.

(a) These records shall be made available to the SFM, or authorized deputies, upon request.

(b) These records shall include the following:

(a) the name and address of all serviced locations;

(b) type of service performed; and

(c) date and name of person performing the work.

R710-7-6. Certificates of Registration.

(1) No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts.

(2) Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM.

(a) The application shall be signed by the applicant.

(b) The concern license shall certify in writing to the SFM that the applicant has been trained and is qualified to perform all work authorized by the certificate of registration.

(3) The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems.

(a) Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies.

(b) Examinations will be given according to the following schedule:

(i) on the first and third Tuesdays of each month; or

(ii) when holidays conflict with these days, the day immediately following will be used.

(c) An appointment will be made to take an examination at least 24 hours in advance of the examination date.

(d) Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

(e) All certification examinations given are open book examinations.

(i) The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination.

(ii) Any other materials to include cellular telephones, lap tops, IPads, IPods, note books or any other memory storage device are prohibited in the examination room.

(f) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

(g) Each certification examination taken has a time limit

of two hours to completion.

(i) Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(h) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

(4) To successfully pass the written examination, the applicant must obtain a minimum grade of 70% in each portion of the examination taken.

(5) The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

(6) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(a) Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination.

(b) The decision of the SFM shall be final.

(7) Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

(8) Original certificates of registration will be valid for one year from the date of application.

(a) Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from the previous date of expiration.

(b) In the event that a certificate of registration is not renewed prior to the expiration date, the applicant shall be required to apply for an original certificate of registration with a new license number.

(c) The failure to renew a certificate of registration will cause the certificate of registration and the certificate of registration number to become invalid.

(d) The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

(9) Renewal is the responsibility of the holder of the Certificate of Registration.

(a) Application for renewal will be made as directed by the SFM.

(b) A renewed certificate of registration shall be valid for one year from the previous date of expiration.

(10) Every holder of a valid certificate of registration will take a re-examination every five years, from the date of original certificate, as follows:

(a) the re-examination shall consist of one open book examination to be administered by the SFM at least 60 days before the renewal date;

(b) the re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the board or SFM;

(c) the certificate holder is responsible to complete the re-examination prior to expiration and in sufficient time to renew; and

(d) the certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(11) The SFM may refuse to renew any certificate of registration for the reasons that are authorized pursuant to Section R710-7-9.

(a) The applicant will, upon such refusal, have the same rights as are granted by Section R710-7-9 to an applicant for an original certificate of registration which has been denied by the SFM.

(12) The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

(13) Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within 30 days of such change.

(a) Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

(14) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

(15) No certificate of registration shall be issued to any person who is under 18 years of age.

(16) Restrictive Use

(a) No certificate of registration will constitute authorization for any person to enter upon or into any property or building without expressed permission from an authorized individual.

(b) No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the International Fire Code.

(c) Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

(17) Certificates of registration will not be transferable.

(a) Individual certificates of registration will be carried by the person to whom issued.

(18) No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

(19) New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed 45 days from the initial date of employment.

(20) Every certificate will be identified by a number, delineated as HE-number.

R710-7-7. Service Tags and Labels.

(1) Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width. Tags may be any color except red.

(2) One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected.

(3) The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

(a) All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

(4) A new service tag will be attached to a properly functioning system each time service is performed.

(a) A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section R710-7-7(9).

(5) The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

(6) No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

(7) All service tags shall be designed as required by the SFM.

(8) Six year maintenance and hydrostatic test labels will be affixed by a heatless process; and

(a) the labels will be:

(i) applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing;
(ii) durable to withstand the effects of weather and adverse conditions; and
(iii) designed as directed by the SFM.
(9) Non-compliance tags:
(a) will be affixed in a conspicuous location to any system failing to:
(i) meet service specifications; or
(ii) fully comply with manufacturers specifications or these rules;
(b) shall be red in color;
(c) will be designed as required by the SFM; and
(d) shall remain in place until corrections are complete.
(e) After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative.
(i) The service person shall also furnish a copy of the service report to the authority having jurisdiction.

R710-7-8. Requirements For All Approved Systems.
(1) Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.
(a) When fusible links are a required portion of the system, fusible links will be replaced semiannually or as required by the manufacturer of the system.
(b) Fusible links will show the date when installed by year only.
(c) Fusible links will not be used after February 1 of the next year showing a previous years date.
(2) Interchanging of parts from different manufactured systems is prohibited.
(a) Parts shall be specifically listed and compatible for use with the designed system.
(3) All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service.
(a) Parts that are required to be returned to the manufacturer due to warranty are exempt.
(4) Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test.
(a) A non-compliance tag will not be accepted to meet the requirements of this section.
(5) At the time of installation, and during any service, all servicing will be done in accordance with the manufacturer's instructions, adopted statutes, and these rules.
(a) Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions.
(b) Discharge nozzles and piping will be free of obstructions or substances.

R710-7-9. Adjudicative Proceedings.
(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.
(2) The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:
(a) the person or applicant is not the real person in interest;
(b) the person or applicant provides material misrepresentation or false statement on the application;
(c) the person or applicant refuses to allow inspection by the SFM, his duly authorized deputies;
(d) the person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made;
(e) the person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section R710-7-6;
(f) the person or applicant has been convicted of one or more federal, state or local laws;
(g) the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules;
(h) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration; or
(i) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire suppression systems.
(3) A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the board if requested by that person within 20 days after receiving notice.
(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.
(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved.
(a) The board shall be the final authority on the suspension or revocation of a license or certificate of registration.
(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.
(7) Reconsideration of the board decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.
(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose license or certificate of registration has been revoked.
(a) After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board.
(b) After the hearing, the board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.
(9) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

R710-7-10. Validity.
If any section, subsection, sentence, clause, or phrase of these rules is for any reason held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

R710-7-11. Fees.
(1) The required fee will accompany the application for license or certificate of registration.
(a) License or certificate of registration fees will be refunded if the application is denied.
(2) When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time.
(a) Examinations will be re-taken with initial fees.

KEY: fire prevention, fire suppression systems, systems
September 13, 2016 53-7-204
Notice of Continuation May 4, 2017

R714. Public Safety, Highway Patrol.
R714-110. Permit to Operate a Motor Vehicle in Violation of Equipment Laws.
R714-110-1. Authority.

A. This rule is authorized by Subsection 53-8-204(5).

R714-110-2. Purpose of Rule.

A. The Utah Highway Patrol, hereafter division, may issue a permit which will allow operation of a motor vehicle in violation of the provisions of Title 41, Chapter 6a, as authorized by Section 41-6a-1602.

B. The purpose of this rule is to set forth the procedures whereby:

(1) A person may apply for a permit.

(2) The division may act on a permit application.

(3) A person may appeal a permit denial.

R714-110-3. Designation.

A. All adjudicative proceedings performed by the division will proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

R714-110-4. Application.

A. A person may apply for a permit on a form provided by the division.

R714-110-5. Processing of Application.

A. The division may issue a permit if the motor vehicle is safe to operate and if any of the following conditions are met:

(1) The applicant shows proof satisfactory to the division of a medical disability which requires the removal, addition, or modification of a motor vehicle part.

(2) The applicant is temporarily unable to obtain a motor vehicle part for reasons beyond the applicant's control.

(3) The applicant is the head of a law enforcement agency and removal, addition, or modification of a motor vehicle part is necessary for a legitimate law enforcement purpose.

B. The permit issued will be on a form provided by the division.

C. The permit may specify conditions under which the permit is granted including times and places the motor vehicle may be driven, duration of the permit, and any other conditions which the division considers appropriate to protect the safety of highway users or efficient movement of traffic.

R714-110-6. Appeal.

A. An applicant who is denied a permit will be given the reasons for denial in writing by the division.

B. An applicant who is denied a permit or who is granted a permit containing conditions with which the applicant disagrees, may appeal to the division on a form provided by the division. The appeal must be filed within ten days after receiving notice from the division.

C. No hearing will be granted to the applicant. The division will review the appeal and issue a written decision to the applicant within ten days either affirming or modifying the initial decision concerning the permit.

KEY: traffic regulations
February 15, 1997 41-6-117.5
Notice of Continuation June 19, 2017

R714. Public Safety, Highway Patrol.
R714-158. Vehicle Safety Inspection Program Requirements.
R714-158-1. Authority.

This rule is authorized by Subsection 53-8-204(5).

R714-158-2. Purpose.

The purpose of this rule is to set standards governing the administration and enforcement of the safety inspection program in accordance with Title 53, Chapter 8, Part 2.

R714-158-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-8-102, 53-8-202, and the Federal Motor Carrier Safety Regulations contained in Subchapter B, Chapter III, Subtitle B of the Code of Federal Regulations Title 49 - Transportation.

(2) In addition:

(a) "agency action" means a written warning, suspension, revocation, or denial applied against a certification, license, or application.

(b) "applicant" means a person who has applied to the division for a permit or certificate;

(c) "certificate" means the authorization for a safety inspector to conduct safety inspections;

(d) "conviction" means an adjudication of guilt regarding criminal conduct, including:

(i) a finding of guilt by a court or a jury;

(ii) a guilty plea;

(iii) a plea of nolo contendere; or

(iv) a plea which is held in abeyance pending the successful completion of a probationary period;

(e) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;

(f) "fleet station" means a station that only conducts safety inspections on vehicles that are owned or leased by the same company that owns the station;

(g) "inspection certificate" means the certificate of inspection given when a vehicle passes or fails the requirements of the inspection program;

(h) "licensee" means a person who has been granted a permit or certificate by the division;

(i) "OEM" means original equipment manufacturer;

(j) "online inspection program" means the web-based inspection program used to record safety inspections;

(k) "permit" means the authorization for a person to operate a station;

(l) "revocation" means the permanent deprivation of a certificate or permit;

(m) "inspector" means a person with a valid certificate who is employed by a licensed station;

(n) "station" means a business or government facility located in Utah that is managed or operated by a valid permit holder and conducts safety inspections;

(o) "suspension" means the temporary deprivation of a certificate or permit;

(p) "sticker" means a safety inspection sticker distributed by the division to a station which affixes it to a vehicle with a gross vehicle weight rating of 26,001 pounds or more, or is equipped with an air braking system regardless of weight rating, when that vehicle meets the safety inspection requirements;

(q) "sticker report" means the document of inspection given when a vehicle with a gross vehicle weight rating of 26,001 pounds or more, or a vehicle equipped with an air braking system regardless of weight rating, fails or meets the safety inspection requirements; and

(r) "Utah Interactive" means the company that has contracted with the division for the setup and facilitation of the online inspection program.

R714-158-4. Safety Inspection Station Permits.

(1) To be eligible for a new permit or to retain a current permit, an applicant shall:

(a) employ a station manager who possesses a valid certificate;

(b) obtain and maintain a $10,000 surety bond or garage keepers insurance for the station that the permit holder seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government or fleet station;

(c) obtain and maintain a valid business license for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station;

(d) obtain and maintain a valid business registration from the Utah Department of Commerce for the safety inspection station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station; and

(e) enroll the station in the online inspection program after receiving approval from the division.

(2)(a) An applicant seeking to manage or operate a safety inspection station shall submit a completed permit application packet to the division.

(b) The permit application packet shall include:

(i) a completed permit application form provided by the division;

(ii) a non-refundable permit application fee, unless the station the applicant seeks to manage or operate is a government station;

(iii) proof of a $10,000 surety bond or garage keepers insurance for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government or fleet station;

(iv) documentation of a valid business license for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station; and

(v) documentation of a valid business registration from the Utah Department of Commerce for the safety inspection station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station.

(3)(a) Upon receipt of a completed application packet, the division shall review the materials to determine if the applicant is eligible for a permit.

(b) The division may request additional information to determine if the applicant is eligible for a permit.

(4) After receipt of all of the necessary documentation, the division shall inspect the station that the permit holder intends to manage or operate to determine if the station meets the requirements of the safety inspection program.

(5)(a) If the division determines that the applicant has met all of the requirements for a permit, the division shall issue the permit to the applicant.

(b) The permit is non-transferable.

(6)(a) If the division determines that the applicant does not meet the requirements for a permit, the division shall issue a denial letter to the applicant.

(b) The denial letter shall state the reasons for denial and indicate that the applicant may have the matter reviewed as provided in Section 11 of this Rule.

R714-158-5. Building and Equipment Requirements.

(1) To be eligible for a permit or to maintain a permit, the inspection station building and site must meet the following conditions:

(a) the building is capable of housing the vehicles to be inspected;

(b) the building has a level concrete or asphalt floor; and

(c) the site has a business sign of a permanent construction, properly displaying the business name that is listed on the business station application, unless the station the applicant seeks to manage or operate is a government or fleet station.

(2) An inspection station shall have the following tools and equipment:

(a) a current hard copy of the safety inspection manual, or an electronic copy that has been downloaded as a file on a station computer;

(i) accessing the manual online does not meet this requirement;

(b) the necessary hand tools to conduct an inspection;

(c) a hoist capable of lifting all four tires simultaneously off of the ground;

(i) stations in operation prior to January 1, 2009 are exempt from this requirement, but the station shall possess a hoist or heavy-duty jack with jack stands;

(d) measuring gauges and instruments for determining minimum specifications in the inspection process;

(e) a two-piece approved light meter kit capable of measuring window light transmittance at a minimum of +/- 3%;

(f) a dial indicator for measuring ball joint and suspension component tolerances;

(g) a tire tread depth gauge;

(i) a riveted brake lining gauge may be used for tire tread depth gauge;

(h) a tire pressure gauge;

(i) a tape measure; and

(j) the following brake gauges:

(i) bonded;

(ii) riveted;

(iii) disc pad;

(iv) rotor; and

(v) drum.

(3) An inspection station that performs inspections on heavy motor vehicles, trailers, or buses shall have the following tools and equipment:

(a) a hoist;

(b) a two-piece light meter approved by division;

(c) hand tools including wrenches, screwdrivers, and ratchets;

(d) a dial indicator for measuring ball joint and suspension component tolerances;

(e) a tire tread depth gauge;

(f) a current hard copy of the safety inspection manual, or an electronic copy that has been downloaded as a file on a station computer;

(i) accessing the manual online does not meet this requirement;

(g) a tire pressure gauge;

(h) a king pin gauge;

(i) a fifth wheel jaw tester;

(j) a measuring tape;

(k) a current copy of the School Bus Standards and Inspection Manual, if the station inspects school buses; and

(l) the following brake gauges:

(i) bonded;

(ii) riveted;

(iii) disc pad;

(iv) rotor; and

(v) large drum.

(4) The division may grant an exception to the minimum requirements of this section upon written request from the applicant or licensee that shows extenuating circumstances justifying the exemption.

R714-158-6. Safety Inspector Certificates.

(1) To be eligible for a certificate, an applicant shall:

(a) be 18 years of age or older; and

(b) attend and successfully complete the safety inspector training course.

(2)(a) An applicant seeking to perform safety inspections shall submit a completed certificate application packet to the division.

(b) The application packet shall include:

(i) a completed certificate application form provided by the division;

(ii) a non-refundable certificate application fee;

(iii) a passport, copy of a valid driver license, or identification card issued by a state government within the United States or one of its territories to verify the applicant's identity; and

(iv) documentation that the applicant attended and successfully completed the safety inspector training course.

(3)(a) Upon receipt of a completed application packet, the division shall review the materials to determine if the applicant is eligible for a certificate.

(b) The division may request additional information to determine if the applicant is eligible for a certificate.

(4)(a) If the division determines that the applicant has met all of the requirements for a certificate, the division shall issue the certificate to the applicant.

(b) The certificate is non-transferable and shall expire five years from the date of issuance.

(5)(a) If the division determines that the applicant does not meet the requirements for a certificate, the division shall issue a letter of denial to the applicant.

(b) The denial letter shall state the reasons for denial and indicate that the applicant may have the matter reviewed as provided in Section 11 of this Rule.

R714-158-7. Renewal of Certificates.

(1) To be eligible to renew a certificate, a licensee shall retake and successfully complete the safety inspector training course within six months prior to the expiration date of the certificate, either in person or online.

(2)(a) A licensee seeking to renew a certificate must submit a completed certificate renewal packet to the division.

(b) The certificate renewal packet shall include:

(i) a written renewal form provided by the division;

(ii) a non-refundable certificate renewal fee; and

(iii) documentation the inspector has re-taken and successfully completed the safety inspector training course, either in person or online, within six months prior to the expiration date of inspector's certificate.

(3)(a) Upon receipt of a completed renewal packet, the division shall review the materials to determine if the licensee is eligible to renew the permit or certificate.

(b) The division may request additional information to determine if the licensee is eligible to renew the certificate.

(4) If the division determines the licensee has met all of the requirements for renewal, it shall renew the certificate for the licensee.

(5)(a) If the division determines the licensee does not meet the renewal requirements, it shall deny the renewal application for the certificate and notify the licensee in writing.

(b) The denial notification shall state the reasons for denial and state the licensee may have the decision reviewed by filing a written request for hearing within 30 calendar days as provided in Section 11 of this Rule.

R714-158-8. Safety Inspector Training Program.

(1)(a) The safety inspector training course shall consist of a 16-hour training program provided by an educational institution approved by the division.

(b) The educational institution shall:

(i) possess all of the necessary tools to conduct a safety

inspection in accordance with Administrative Rules R714-160, R714-161, R714-162, and R714-163;

(ii) teach the safety inspection curriculum approved by the division; and

(iii) administer the quizzes and final test generated by the division.

(2) The safety inspector training course shall be taught by instructors that are employees of an educational institution approved by the division.

(3) Students shall attend all 16 hours of the safety inspector training course and pass the final test in order to successfully complete the course.

(4)(a) Any student who falsifies information or cheats on a quiz or test during the safety inspection training course shall be removed from the course and not allowed to complete it.

(b) A student removed from a safety inspection training course may not retake the class for a period of one year.

R714-158-9. General Safety Inspection Program Requirements.

(1) A permit holder shall be responsible for the management and operation of a station and shall:

(a) acquire and maintain the required equipment at the station;

(b) ensure all inspections are performed at the station and are conducted in accordance with Administrative Rules R714-158-8, R714-160, R714-161, R714-162, R714-163;

(c) ensure all inspection certificates are issued through the online inspection program, unless the program is temporarily unavailable;

(i) if the online inspection program is unavailable for more than three business days, the station shall contact the division;

(d) retain a copy of all station records for a period of one year, including plate brake test records;

(e) make the station and its records available for inspection by the division;

(f) ensure the station has an adequate supply of paper inspection certificates and stickers;

(g) ensure the paper inspection certificates and stickers are safeguarded against loss or theft;

(h) immediately report missing or stolen paper inspection certificates or stickers to the division;

(i) display the permit at the station in a prominent location that is easily visible to the public;

(j) report any changes in the station's name or address to the division;

(k) report any changes in the permit holder's mailing address to the division;

(l) notify the division if there is a change in inspectors who are employed at the station;

(m) ensure that the station uses and displays only the name of the station provided to the division; and

(n) ensure that the station's Utah Interactive account is not delinquent.

(2) An inspector shall:

(a) work under the direction of a permit holder;

(i) an inspector may also be a permit holder for the same station;

(b) only conduct inspections onsite at the station designated on the employer's permit;

(c) conduct all inspections fully as described in Administrative Rules R714-160, R714-161 R714-162, and R714-163 before an inspection certificate or sticker may be issued or a customer is informed about any reject items;

(d) conduct all safety inspections honestly and thoroughly;

(e) not coerce customers or sell unneeded parts or repairs;

(f) advise customers the vehicle need not be repaired or adjusted at the station that conducted the safety inspection, but needed repairs may be made at any business selected by the customer;

(g) obtain the customer's authorization before performing any repair or adjustments;

(h) return any part that is replaced to the customer, upon request;

(i) show a part that is to be replaced or repaired to the customer if it cannot be returned, upon request;

(j) issue all inspection certificates using the online inspection program if the station is enrolled in the program, unless the program is temporarily unavailable;

(k) enter the information from a paper inspection certificate to the online inspection program within 72 hours after the program becomes available again;

(l) only use his or her assigned username and password issued by the division when using the online inspection program to complete a safety inspection;

(m) complete all paper safety inspection records legibly;

(n) fully complete everything on the inspection certificates, stickers, and sticker reports on the same date the vehicle inspection is conducted;

(o) conduct inspections, issue certificates, and attach stickers to vehicles only at the station where the inspector is employed, unless the inspection is performed on a government-owned emergency fire response vehicle or ambulance;

(p) not sell or transfer inspection certificates, stickers, or sticker reports to another station;

(q) complete inspection paperwork or enter the information in the online inspection program whenever a vehicle is inspected;

(r) avoid conducting safety inspections on his or her personally owned or operated vehicles;

(s) report any change to his or her mailing address to the division; and

(t) notify the division if he or she changes employers.

R714-158-10. Inspection Certificates, Stickers, and Sticker Reports.

(1) Inspection certificates will be issued in books of 50 for passenger/light truck, books of 25 for ATVs, and books of 25 for stickers and sticker reports.

(2) A station may purchase two books of inspection certificates for passenger/light truck, four books of inspection certificates for ATV, and four books of sticker reports to use when the online inspection program is temporarily unavailable.

(3) A station may not purchase another book of inspection certificates or sticker reports until the station returns one of the used books that it previously purchased to the division.

(4) Unused books of inspection certificates, sticker reports, or stickers may be returned to the division for reimbursement.

R714-158-11. Grounds for the Denial, Suspension, or Revocation of Station Permit or Inspector Certificate.

(1) An applicant or licensee may be denied, suspended, or revoked for any of the following reasons:

(a) a violation of any Utah state or federal safety inspection law, rule or regulation;

(b) providing any false or misleading information during:

(i) the application or renewal process for a permit or certificate;

(ii) a division investigation or station visit; or

(iii) an administrative hearing; or

(c) conviction of a crime involving dishonesty, deception, or theft.

(2) In determining whether denial, suspension or revocation of a permit or certificate is appropriate, the division shall consider the applicant or licensee's previous history with the safety inspection program.

(3)(a) If an inspector is suspended, the inspector may not conduct safety inspections or represent him or herself to be an

inspector.

(b) If a permit holder is suspended, no one at the permit holder's station may conduct safety inspections or represent the station as a safety inspection station.

(c) An applicant or licensee who is denied a certificate or permit may not be eligible to reapply for a period of 90 days from the date of denial.

(d) A licensee whose certificate or permit is revoked shall not be eligible to reapply for another certificate or permit for a period of one year from the date of revocation.

R714-158-12. Adjudicative Proceedings.

(1) All adjudicative proceedings set forth in this section shall be conducted informally as provided in Section 63G-4-202.

(2) The division shall initiate agency action against an applicant or licensee with a notice of agency action in accordance with Section 63G-4-201.

(3)(a) An applicant or licensee who receives a notice of agency action indicating that the division intends to deny, suspend, or revoke a permit or a certificate may request a hearing by filing a written request for hearing with the division within 15 calendar days from the date of the notice of agency action.

(b) A hearing shall be held before a hearing officer designated by the division, within 30 calendar days of the day that the division receives the timely written request for hearing, unless the parties agree to a later date.

(c) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.

(d) At the hearing, the applicant or licensee shall have an opportunity to explain why the division should not take agency action.

(e) The hearing officer shall issue a written decision in accordance with Section 63G-4-203 within ten business days of the hearing.

(4)(a) An applicant or licensee may appeal the hearing officer's decision to the council by filing an appeal with the division within 30 calendar days of the issuance of the hearing officer's decision.

(b) If a timely appeal to the council is filed, the agency action shall be stayed until the council issues a written decision.

(c) A hearing shall be held before the council within 30 calendar days of the day that the division receives the written appeal, unless the parties agree to a later date.

(d) At the hearing, the applicant or licensee shall have an opportunity to explain why the division's action should be overturned.

(e) The council shall issue a written decision in accordance with Section 63G-4-301 within ten business days of the hearing.

(f) The written decision of the council shall constitute final agency action and is subject to judicial review pursuant to Section 63G-4-402.

R714-158-13. Procedures for Safety Inspection Station Closure.

(1) When a safety inspection station is going out of business, the manager or owner of the station shall:

(a) notify the division of the effective date of the closure at least one week prior to the date of closure;

(b) discontinue conducting safety inspections on the date of closure; and

(c) within one week after the date of closure, return the following to the division:

(i) the station permit;

(ii) all inspection certificates;

(iii) all stickers; and

(iv) all sticker reports.

(2) The division shall cancel online access to the Vehicle Safety Inspection System on the effective date of the station closure.

KEY: motor vehicle safety, inspections
September 27, 2016 53-8-204
Notice of Continuation June 19, 2017

R714. Public Safety, Highway Patrol.

R714-159. Vehicle Safety Inspection Apprenticeship Program Guidelines.

R714-159-1. Purpose.

The purpose of this rule is to establish program guidelines for a school district that elects to implement a vehicle safety inspection apprenticeship program for high school students in accordance with Title 53, Chapter 8, Part 2.

R714-159-2. Authority.

This rule is authorized by Subsection 53-8-204(5)(e).

R714-159-3. Definitions.

As used in this rule:

(1) "Apprentice" means a person meeting the qualifications described in Section II, of the Standards of Apprenticeship for Automotive Technician with the U.S. Department of Labor, who has entered into a written apprenticeship agreement providing for learning and acquiring the skills of a recognized occupation under the provisions of these standards.

(2) "Apprenticeship agreement" means the Standards of Apprenticeship for Automotive Technician as developed by the Bureau of Apprenticeship and Training, U.S. Department of Labor signed by both the apprentice and sponsor.

(3) "Certified apprentice" means a person authorized by the department to conduct safety inspections.

(4) "Closely supervise" means a sponsor will be physically present at all times on premises where safety inspections are conducted and responsible for apprentice's actions.

(5) "Inspector" means a person employed by a station licensed to conduct safety inspections.

(6) "License" means the authority given to a station by the department to conduct safety inspection.

(7) "Registration agency" means the Bureau of Apprenticeship and Training, U.S. Department of Labor.

(8) "Sponsor" means a licensed inspector who supervises and oversees a certified apprentice and has signed the apprenticeship agreement.

(9) "Station" means a business, including public garages, service stations, and repair shops licensed by the department to conduct safety inspections.

R714-159-4. Apprentice Requirements.

An applicant for certified apprentice shall:

(1) be registered as an Automotive Technician Apprentice with the Bureau of Apprenticeship and Training, U.S. Department of Labor;

(2) be a senior in high school;

(3) be at least 16 years of age;

(4) obtain training in accordance with the requirements of Section 6 of this rule;

(5) pay a $10 non-refundable processing fee;

(6) have a valid drivers license; and

(7) only work in one sponsored station during their apprenticeship.

R714-159-5. Sponsor Requirements.

A sponsor shall:

(1) maintain records as required by the registration agency for five years;

(2) closely supervise certified apprentices;

(3) upon request, make available for inspection by the department all apprentice records.

R714-159-6. Apprentice training.

An apprentice shall obtain training through a department contracted Applied Technology Center, or through a high school that has elected to contract with the department for apprenticeship training and testing.

R714-159-7. Probationary Period.

(1) A certified apprentice will operate in a probationary period until they turn 18 years old. During this probationary period, the department, the sponsor, or apprentice may terminate the apprenticeship agreement without cause.

(2) Upon turning 18 years old, a certified apprentice may apply for an inspector certification under R714-158-5.

KEY: motor vehicles, safety inspections, apprentices

June 26, 2003 53-8-204(5)(e)

Notice of Continuation June 19, 2017

R714. Public Safety, Highway Patrol.
R714-200. Standards for Vehicle Lights and Illuminating Devices.
R714-200-1. Purpose.

Section 41-6a-1620 requires that the Department shall approve or disapprove any lighting device or other safety equipment, component or assembly of a type for which approval is specifically required. The standards shall conform as nearly as practical to Federal Motor Vehicle Safety Standards and Regulations.

R714-200-2. Authority.

This rule is authorized by Sections 41-6a-1601 and 41-6a-1620, and Subsection 53-1-106(1)(a).

R714-200-3. Federal Standard Adopted and Incorporated by Reference.

The Department hereby adopts the standards set forth in 49 CFR 571 Standard 108 (1997 edition) as the standard governing vehicle lights and illuminating devices in Utah and incorporates such federal regulation into this rule by this reference.

R714-200-4. Miscellaneous Light Restrictions.

A. Alternately flashing lights described in Sections 41-6a-1616 and 41-6a-1302 may not be used on any vehicle other than a school bus or authorized emergency vehicle.

B. No vehicle, except an authorized emergency vehicle, may use rotating lights as described in Subsection 41-6a-1616(4).

C. No vehicle, except a police vehicle, may use rotating blue lights or flashing blue lights as described in Section 41-6a-1616.

R714-200-5. Process of Requesting Equipment Approval.

A. Upon receiving a written request, the Department shall review the equipment to ensure that it meets Federal Motor Vehicle Safety Standards.

B. After reviewing the equipment, the Department shall issue a written response, explaining the reason for approval or denial of the requested equipment.

KEY: lights, motor vehicle safety
December 1, 2008 **41-6-117**
Notice of Continuation June 19, 2017 **41-6-142**
53-1-106(1)(a)

R714. Public Safety, Highway Patrol.
R714-210. Standards for Motor Vehicle Air Conditioning Equipment.
R714-210-1. Purpose.

The purpose of this rule is to adopt standards for motor vehicle air conditioning equipment which will protect the public and occupants of motor vehicles.

R714-210-2. Authority.

This rule is authorized by Subsection 41-6a-1640 and 53-1-106(1)(a).

R714-210-3. Federal Standards Adopted and Incorporated by Reference.

The Department of Public Safety hereby adopts the motor vehicle air conditioning equipment standards set forth in 40 CFR 82.30 through 82.42, and Pt. 82, Subpt. B, App. A and App. B (2006 edition) as the motor vehicle air conditioning equipment standards for Utah and incorporates such federal regulation into this rule by this reference.

KEY: air conditioning, motor vehicle safety
May 5, 1998 41-6a-1640
Notice of Continuation June 19, 2017 53-1-106(1)(a)

R714. Public Safety, Highway Patrol.
R714-300. Standards for Motor Vehicle Braking Systems.
R714-300-1. Purpose.

The purpose of this rule is to adopt standards for motor vehicle braking systems.

R714-300-2. Authority.

This rule is authorized by Section 41-6a-1601 and 53-1-106(1)(a).

R714-300-3. Federal Standard Adopted and Incorporated by Reference.

The Department of Public Safety hereby adopts the motor vehicle braking standards set forth in 49 CFR 393.40 through 393.50, 571.105, and 571.122 (1996 edition) as the motor vehicle braking standards for Utah and incorporates such federal regulations into this rule by this reference.

KEY: brakes, motor vehicle safety
May 5, 1998 **41-6a-1601**
Notice of Continuation June 19, 2017 **53-1-106(1)(a)**

R714. Public Safety, Highway Patrol.

R714-550. Rule for Spending Fees Provided under Section 53-1-117.

R714-550-1. Purpose.

Pursuant to Section 53-1-117, this rule establishes criteria and procedures for the Utah Department of Public Safety to administer revenues from the "Public Safety Restricted Account" established by Section 53-3-106(1); which accrue from fee income pursuant to Sections 41-6-44.30, 53-3-105(29) and 53-3-106(5). Accordingly, these funds shall be used to:

(a) purchase equipment for law enforcement agencies of the state and its political subdivisions to assist them in enforcing alcohol or drug related driving laws;

(b) train peace officers;

(c) provide peace officer overtime; and

(d) fund the managing of DUI related motor vehicles.

R714-550-2. Authority.

This rule is authorized by Section 53-1-117 which requires the department to make rules establishing criteria and procedures for alcohol or drug enforcement funding.

R714-550-3. Law Enforcement Alcohol and Drug Fee Committee.

This rule establishes the Law Enforcement Alcohol and Drug Fee Committee (committee) which shall be responsible for assisting the department in awarding funds to purchase equipment, train peace officers, fund peace officer overtime, and develop DUI related vehicle management functions to assist in the enforcement of alcohol or drug related driving laws.

R714-550-4. Committee Membership.

(1) The committee shall consist of six members made up of one representative from each of the following groups or organizations:

(a) Utah Highway Patrol Superintendent or designee;

(b) Utah Department of Public Safety, Breath Alcohol Program;

(c) Utah Division of Highway Safety;

(d) Utah Sheriffs Association;

(e) Utah Chiefs of Police Association;

(f) Statewide Association of Prosecutors;

(2) Members of the committee shall:

(a) be approved by the Commissioner of the Utah Department of Public Safety;

(b) be appointed for four year terms; and

(c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.

(3) If a vacancy occurs during the four year term of a committee member, a new member shall be appointed from the same group or organization to complete the term of that member.

(4) The committee shall select a chairman and vice-chairman from among its members.

(5) Four members shall constitute a quorum for committee action.

(6) The department's special counsel shall assist the committee as needed.

R714-550-5. Committee Meetings.

The committee shall meet at least quarterly for the purpose of reviewing and approving applications from law enforcement agencies.

R714-550-6. Applications.

Applications for the funding of equipment, training, peace officer overtime, and DUI related vehicle management functions shall be made on department forms and shall be mailed to the committee in care of the department.

R714-550-7. Criteria and Awards.

The committee shall use the following criteria in approving funding awards:

(a) the effectiveness to which the equipment, training, overtime or DUI related vehicle management funds will be used by the agency seeking to improve enforcment of alcohol or drug related driving laws;

(b) the effectiveness of the equipment, training, overtime or DUI related vehicle management funds in enhancing the agency's ability to prosecute impaired drivers;

(c) indicators of more efficient use of manpower; and

(d) the completeness of the agency's application.

R714-550-8. Agency Accountability.

Law enforcement agencies that receive funding shall:

(a) use the awarded resources only in the manner set forth in the agency's application;

(b) use the awarded resources only to enforce alcohol and drug related driving laws;

(c) maintain records for five years sufficient to show how the funding is used; and

(d) cooperate with the committee if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding.

KEY: drugs, alcohol, fees

August 24, 2000 53-1-117

Notice of Continuation June 19, 2017

R746. Public Service Commission, Administration.
R746-101. Statement of Rule for the Filing and Disposition of Petitions for Declaratory Rulings.
R746-101-1. Definitions.

A. Terms used in this rule are defined in Section 63G-4-103, except that "agency" shall mean the Utah Public Service Commission.

B. In addition:

1. "Order" shall mean a Commission action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons and not a class of persons;

2. "Declaratory Ruling" shall mean an administrative interpretation or explanation of rights, status, interests or other legal relationships under a statute, rule or order; and

3. "Applicability" shall mean a determination of the relationship of a statute, rule or order to a given set of facts.

R746-101-2. Petition Procedure.

A. A person or agency may petition the Commission for a declaratory ruling.

B. The petition shall be addressed to the Commission and directed to the chairman of the Commission.

C. The Commission will stamp upon the petition the date of its receipt.

D. The petitioner shall serve a copy of the petition upon the public utility which could or would be adversely affected by a Commission ruling favorable to the petitioner and shall file with the Commission the certificate of service within five days of the filing of the petition; or petitioner shall include in the petition a statement to the effect that no public utility under the Commission's jurisdiction will be adversely affected by a ruling favorable to the petitioner.

R746-101-3. Petition Form.

A. The petition shall:

1. be clearly designated a request for a declaratory ruling;

2. identify the statute, rule or order to be reviewed;

3. describe adequately the facts and circumstances in which applicability is to be reviewed;

4. describe the reason or need for the review;

5. include an address and telephone number where petitioner can be reached; and

6. be signed by the petitioner or petitioner's duly authorized representative and be notarized.

R746-101-4. Petition Review and Disposition.

A. The Commission shall:

1. review and consider the petition;

2. prepare a declaratory ruling in compliance with the requirements of 63G-4-503(6) and stating:

a. the applicability or non-applicability of the statute, rule or order in question;

b. the reasons for the applicability or non-applicability of the statute, rule or order in question;

c. requirements imposed upon the Commission, petitioner, or a person as a result of the ruling.

B. The Commission may:

1. interview the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take action which the Commission, in its discretion and judgment, deems necessary to provide the petitioner with adequate review and due consideration of the petition.

C. The Commission shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner and each party a copy of the ruling.

D. The Commission shall retain the petition and a copy of the declaratory ruling in its records.

KEY: public utilities, rules and procedures, government hearings
1992 63G-4-102(5)
Notice of Continuation November 28, 2012 63G-4-503(6)

R746. Public Service Commission, Administration.
R746-110. Uncontested Matters to be Adjudicated Informally.
R746-110-1. Requests.

When a request for agency action is filed with the Commission and the party filing the request anticipates and represents in the request that the matter will be unopposed and uncontested, or when the Commission determines that the matter can reasonably be expected to be unopposed and uncontested the request may be adjudicated informally in accord with Section 63G-4-203 and the following:

R746-110-2. Procedure.

The applicant shall file in support of the request sworn statements and documents as may be necessary to establish the pertinent facts of the matter. Thereupon, the Commission may, without hearing, enter its Report and Order in tentative form not to be effective for a minimum of 20 days after its issuance. Provided, however, that in cases where the applicant shall establish good cause, the Commission may waive the 20-day tentative period and issue a final order. Section 63G-4-301 provides for review of final agency orders. The order shall provide that any person may file a protest prior to its effective date and that if the Commission finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. The order shall be served by the applicant upon all persons deemed by the Commission to have an interest or potential interest in the subject matter, and the Commission may require public notice in the form designated by the Commission.

Absent meritorious protest, the order shall automatically become effective without further action.

R746-110-3. Rate Increases.

In cases where a public utility seeks an increase in rates, fees, or charges, informal summary procedure may be invoked if the applicant files in addition to supporting documentation a sworn statement from each person impacted by the increase that such person has no objection to the increase. This provision does not apply to energy-cost pass-through cases, which are provided for in Section 54-7-13.5, nor does it apply to cases brought under Section 54-7-12(6).

KEY: public utilities, rules and procedures
1988 54-4-1
Notice of Continuation June 24, 2013 63G-4-203

R746. Public Service Commission, Administration.
R746-240. Telecommunication Service Rules.
R746-240-1. General Provisions.

A. Authorization--The Utah Public Utility Code Sections 54-1-1, 54-4-4, 54-4-7, 54-4-8, and 54-4-14.

B. Title--These rules shall be known and may be cited as the Utah Service Rules for Telecommunication Corporations.

C. Purpose--The purpose of these rules is to establish and enforce uniform telecommunications service practices and procedures governing eligibility, deposits, account billing, termination and deferred payment agreements.

D. Objective--The objective of these rules is to assure the adequate provision of residential and business telecommunications service, to restrict unreasonable termination of or refusal to provide residential and business telecommunications service, to provide functional alternatives to termination or refusal to provide residential or business telecommunications service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination and deferred payment agreements.

E. Nondiscrimination--Telecommunications service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

F. Requirement of Good Faith--Every agreement or obligation within these rules imposes an obligation of good faith, honest, and fair dealings in its performance and enforcement.

G. Application of Rules--These telecommunications service rules shall apply to each telecommunications corporation operating within Utah under the jurisdiction of the Public Service Commission.

1. A telecommunications corporation may petition the Commission for an exemption from specified portions of these rules in accordance with R746-1-109, Deviation from Rules.

2. The adoption of these rules by the Commission shall in no way preclude it from altering or amending a specific rule pursuant to applicable statutory procedures.

H. Customer's Statement of Rights and Responsibilities--When telecommunications service is extended to an account holder, and annually thereafter, a local exchange carrier shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Public Service Commission. This statement shall be a single page document. It shall be prominently displayed in each customer service center.

R746-240-2. General Definitions.

A. "Account Holder"--A person, corporation, partnership, or other entity which has agreed with a telecommunications corporation to pay for receipt of telecommunications services and to which the utility provides the telecommunications services.

B. "Applicant"--A person, corporation, partnership, or other entity that applies to a telecommunications corporation for local access line services.

C. "Local Exchange Carrier/LEC"--A telecommunications corporation that provides the local access line services within the geographic territory authorized by the Commission.

D. "Deferred Payment Agreement"--An agreement to receive or to continue to receive telecommunications service pursuant to Section R746-240-5, Deferred Payment Agreement, and to pay an outstanding debt or delinquent account owed to a telecommunications corporation.

R746-240-3. Deposits and Eligibility for Service.

A. Deposits and Guarantees--

1. Telecommunications corporations not subject to pricing flexibility pursuant to 54-8b-2.3 shall have Commission approved tariffs on file relating to their security deposits and third party guarantor polices and procedures. Telecommunications corporations subject to pricing flexibility shall include any terms and conditions relating to their security deposits and third party guarantor policies and procedures in their price lists.

2. Simple interest shall accrue on a deposit and shall be paid at the time the deposit is either refunded or applied to the customer's final bill for service. The interest rate used by a telecommunications corporation shall be set by the Commission.

B. Eligibility for Service--

1. Telecommunications service is to be conditioned upon payment of deposits, when required, and of the outstanding debts for past telecommunications service which are owed by the applicant to that telecommunications corporation, subject to Section R746-240-7 Review and Resolution of Disputes, and Section R746-240-8, Formal Agency Proceedings Based Upon Complaint Review. That service may be denied when unsafe conditions exist, when the applicant has given false information in applying for telecommunications service, or when the applicant has tampered with the telecommunications corporation's lines, equipment, or other properties.

2. When an applicant is unable to pay an outstanding debt in full, service may be provided upon execution of a deferred payment agreement as set forth in Section R746-240-5, Deferred Payment Agreement.

3. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, previously terminated for non-payment, and the applicant and the delinquent account holder received the telecommunications corporation's service, whether the service was received at the applicant's present address or another address.

R746-240-4. Account Billing.

A. Billing Procedures--

1. Bills to account holders for telecommunications services shall be issued on a monthly basis and shall be typed or machine printed.

B. Periodic Billing Statement--

1. Except in the case of telecommunications service which is deemed to be uncollectible or with respect to which collection or termination procedures have been instituted, a telecommunications corporation shall mail or deliver to the account holder, for each billing cycle at the end of which there is an outstanding balance for current service, a statement which the account holder may retain, setting forth each of the following disclosures to the extent applicable:

a. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

b. the amount of the charges debited to the account during the current billing cycle using a term such as "current service";

c. the amount of the payments made to the account from the previous billing cycle using a term, such as "payments";

d. the amount of the late payment charges debited to the account during the current billing cycle using a term, such as "late charge";

e. a listing of the closing date of the current billing cycle and the outstanding balance in the account on that date using a term, such as "amount due";

f. a listing of the statement, or payment, due date;

g. a listing of the date by which payment of the new balance must be made to avoid assessment of a late charge;

h. a statement that a late charge, expressed in annual percentage rate or periodic rate, may be assessed against the account for late payment;

i. a statement such as: "If you have questions about this bill, please call the company at--phone #".

C. Late Charge--

1. A late payment charge of a periodic rate as established by the Commission may be assessed against an unpaid balance pursuant to specific tariffs approved by the Commission for telecommunications corporations not subject to pricing flexibility pursuant to 54-8b-2.3. Late payment charges shall not apply if payment is made before the next bill is rendered by the telecommunications corporation. A late payment charge may be assessed against an unpaid balance pursuant to terms and conditions in price lists of telecommunications corporations subject to pricing flexibility.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This subsection does not apply to reconnection charges or return check service charges.

D. Statement Due Date--An account holder shall have not less than 20 days from the bill date to pay the new balance, which date shall be the statement due date.

E. Disputed Bill--

1. In the event of a dispute between the account holder and the telecommunications corporation respecting a bill, the telecommunications corporation may require the account holder to pay the undisputed portion of the bill to avoid discontinuance of service for nonpayment. The telecommunications corporation shall make an investigation as may be appropriate to the particular case, and report the result thereof to the account holder. In the event the dispute is not reconciled, the telecommunications corporation shall advise the account holder that he may make application to the Division of Public Utilities for review and disposition of the matter per Section R746-240-7, Review and Resolution of Disputes.

2. Inaccurately billed service--When the billings for telecommunications services have not been accurately determined because of the telecommunications corporation's omission or negligence, the telecommunications corporation shall offer and enter into reasonable payment arrangements when the amount owed by the customer exceeds $25 and when the period over which the underbilling accumulated exceeds one month. When a telecommunications corporation overbills a customer for telecommunications service, the telecommunications corporation shall offer the account holder a credit on future bills or a refund if requested by the account holder.

3. Interruption of service--In the event the account holder's service is interrupted, other than by the negligence or the willful act of the account holder, and it remains out of service for a specified number of hours, after being reported or found by the telecommunications corporation to be out of order, credit adjustments shall be made to the account holder's billing. The specified number of hours, which can be either 24 or 48, and the adjustment methods will be as shown in the tariffs of each telecommunications corporation and approved by the Commission for telecommunications corporations that are not subject to pricing flexibility pursuant to 54-8b-2.3 or in the price lists of each telecommunications corporation that is subject to pricing flexibility.

R746-240-5. Deferred Payment Agreement.

A. Delinquent Account--

1. An account holder who is unable to pay a delinquent account balance on demand may be able to receive telecommunications services under a deferred payment agreement, if such an agreement is offered by the LEC.

2. When a telecommunications corporation offers a form of a deferred payment agreement, the account holder can prevent disconnection, or be reconnected, by negotiating and executing a deferred payment agreement and paying the first installment at the telecommunications corporation's business office. Within two working days after the account holder makes the first installment payment, telecommunications service will be reconnected.

3. After negotiating a deferred payment agreement, the account holder shall pay the current bills for service plus the monthly installment necessary to liquidate the delinquent bill.

4. A deferred payment agreement may include a late payment charge as authorized for the telecommunications corporation by the Commission.

B. Breach--If an account holder breaches a condition or term of a deferred payment agreement, the telecommunications corporation may treat that breach as a delinquent account and shall have the right to terminate service without further notice.

R746-240-6. Termination.

A. Delinquent Account--

1. A service bill which has remained unpaid beyond the statement due date is a delinquent account. A telecommunications corporation shall not consider an account holder's bill past due unless it remains unpaid for a period of 20 calendar days after the billing date printed on the bill.

2. When an account is delinquent, the telecommunications corporation, before termination, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. a statement that the account is a delinquent account and should be paid promptly;

b. a statement that the account holder should communicate with the telecommunications corporation's collection department, by calling the company, if the account holder has questions concerning the account;

c. a statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice, the telecommunications corporation's collections personnel shall investigate any disputed issue and shall attempt to resolve that issue by negotiation. If the dispute is not resolved, the telecommunications corporation's collection personnel shall inform the account holder that he may make application to the Division of Public Utilities for a review and disposition pursuant to Section R746-240-7, Review and Resolution of Disputes. During this investigation and negotiation and a subsequent review by the Division of Public Utilities no other action shall be taken to terminate the local access service if the account holder pays the undisputed portion of the account, subject to the telecommunications corporation's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.

B. Reasons for Termination--

1. Service may be terminated by a telecommunications corporation for the following reasons:

a. nonpayment of billed and delinquent charges, deposits, deferred payments owed to the telecommunications corporation;

b. abusive use of the telephone services in a manner that interferes with the service of another person;

c. intentionally using the service in a manner that causes wrongful billing charges to another person;

d. intentionally using the service to transmit messages or to locate a person to give or obtain information, without payment of appropriate message charges;

e. using the service with fraudulent intent by impersonating someone else;

f. using the service for unlawful purposes;

g. tampering with or destroying company lines, equipment or other properties;

h. subterfuge or deliberately furnishing false information when applying for and obtaining telephone services;

i. abandonment of the service.

2. The following shall be insufficient grounds for termination of service:

a. a delinquent account, accrued prior to the commencement of a divorce or separate maintenance action in the courts, in the name of a former spouse;

b. cohabitation of a current account holder with one who is a delinquent account holder who was previously terminated for non-payment, unless the current and delinquent account holders also cohabited during the time the delinquent account holder received the telecommunications corporation's service, whether such service was received at the current account holder's present address or another address;

c. when the delinquent account balance is $15.00, or less, except when a delinquent balance has accrued for more than 3 months.

d. delinquency in payment for service by a previous occupant at the premises to be served other than a member of the same family or household;

e. failure to pay any amount in a bona fide dispute before the Division or Commission.

C. Medical Emergency/Medical Facilities--

1. A local exchange carrier shall postpone discontinuance of service of a residential customer for 30 days from the date of a certificate of a licensed physician which states that discontinuance of service will aggravate an existing medical emergency or create a medical emergency for the customer, a member of his family, or other permanent resident on the premises where service is rendered. This postponement shall be limited to a single 30-day period or a lesser period as may be agreed upon by the telecommunications corporation and the account holder. A person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

2. The notice or certificate of medical emergency must be in writing and show clearly the name of the person whose illness would be exacerbated by discontinuance of service, the nature of the medical emergency, the specific manner in which the discontinuance of service will aggravate or create a medical emergency, and the name, title, and signature of the physician certifying the medical emergency.

3. In instances when discontinuance of service is delayed for medical reasons, the telecommunications corporation may restrict the ability of the account holder to place toll calls. The account holder shall pay the appropriate rates for toll restriction service.

D. Termination Without Notice--A telecommunications corporation may terminate local access without notice when, in its judgment, a clear emergency or serious health or safety hazard exists, or when there is unauthorized use of or diversion of a telecommunications corporation service or tampering with lines, or other property owned by the telecommunications corporation. The telecommunications corporation shall notify the account holder of the reason for the termination of service.

E. Notice of Proposed Termination--The account holder shall be notified in writing of the telecommunications corporation's intention to discontinue service and be allowed no less than seven days from the mailing date to respond to the notice. Notices of proposed discontinuance of service shall state:

1. the reasons for and date of scheduled discontinuance of service;

2. actions which the account holder may take to avoid discontinuance of service;

3. a statement of the customer's rights and responsibilities under existing state law and Commission rules.

F. Effort to Contact the Account Holder--

1. On the business day prior to actual discontinuance of telecommunications service, a representative of the telecommunications corporation shall make a reasonable effort to contact the account holder affected, either in person or by telephone, to apprise the account holder of the proposed action and steps to take to avoid or delay discontinuance. This oral notice shall include the same information required for written notice. Each local exchange carrier shall maintain clear, written records of these oral notices, showing dates and names of employees giving the notices.

2. The telecommunications corporation shall make reasonable efforts to personally contact a third party designated by the residential account holder before termination occurs, if the third party resides within its service area. The telecommunications corporation shall inform its account holders of the third party notification procedure in its statement of customer rights and responsibilities.

G. Termination--Upon expiration of the notice of proposed termination, the telecommunications corporation may terminate service.

H. Account Holder Requested Termination--An account holder shall advise a telecommunications corporation at least three days in advance of the day on which he wants local access service disconnected. The telecommunications corporation shall disconnect the service within one working day of the requested disconnect date. The account holder shall not be liable for services rendered to or at the address or location after 11:59 p.m. of the requested disconnect date.

R746-240-7. Review and Resolution of Disputes.

A. Informal Review--A person who is unable to resolve a dispute with a telecommunications corporation concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the telecommunications corporation that an informal complaint has been filed. Absent unusual circumstances, the telecommunications corporation shall attempt to resolve the complaint within five business days. In no circumstance shall the telecommunications corporation fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the telecommunications corporation's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The telecommunications corporation shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the telecommunications corporation requests that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The telecommunications corporation shall inform the Division employee of the telecommunications corporation's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the telecommunications corporations, the complaint shall be presumed to be unresolved.

B. Mediation--If the telecommunications corporation or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so

advise the mediation requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the telecommunications corporation's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the telecommunications corporation. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation--The telecommunications corporation and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint within five business days of the Division's request, if reasonably possible or as expeditiously as possible if they cannot be provided within five business days.

D. Commission Review--If the telecommunications corporation has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal review or mediation by the Division or a Commission review of a dispute, no termination of telecommunications service shall be permitted, if amounts not disputed are paid when due, subject to the telecommunications corporation's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.

R746-240-8. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion, the petition of the Division of Public Utilities, or any person, may initiate formal hearings or investigative proceedings upon a matter arising out of an informal complaint.

KEY: procedures, telecommunications, telephones
August 8, 2005 **54-4-1**
Notice of Continuation June 24, 2013 **54-4-7**
54-7-9

R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-1-109, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2017 edition of the National Electrical Safety Code, C2-2017, as promulgated by the Institute of Electrical and Electronics Engineers, which is incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-2. Customer Relations.

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefore. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

F. Customer Complaints --

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-1-201, Complaints.

G. Service Interruptions --

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 2014 edition of the American National Standards for Electric Meters Code for Electricity Metering, ANSI C12.1-2014, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical energy, unless those supplying the energy have already installed

instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 2011 edition of the American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz), ANSI C84.1-2011, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

R746-310-6. Line Extensions.

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.

R746-310-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

R746-310-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- A utility shall not render a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

R746-310-9. Overbilling.

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;

2. use of an incorrect watt-hour constant;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a switched meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and

8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

R746-310-10. Preservation of Records.

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

KEY: public utilities, utility regulation, electric safety codes, electric utility industries

October 24, 2016 **54-3-1**

Notice of Continuation November 28, 2012 **54-3-7**

54-4-1

54-4-8

54-4-14

54-4-23

R746. Public Service Commission, Administration.
R746-312. Electrical Interconnection.
R746-312-1. Authority.

(1) This rule establishes procedures and standards for electrical interconnection of generating facilities to a public utility as provided for in Sections 54-3-2, 54-4-7, 54-4-14, 54-12-2, and 54-15-106.

R746-312-2. Definitions.

(1) "Adverse system impact" means the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric distribution system.

(2) "Affected system" means an electric system other than a public utility's electric distribution system that may be affected by the proposed interconnection.

(3) "Building code official" means the city or local official whose responsibility includes inspecting facilities for compliance with the city or local jurisdiction electrical code requirements.

(4) "Business day" means Monday through Friday, excluding Federal holidays.

(5) "Confidential information" means any confidential and/or proprietary information provided by one party to the other party that is clearly marked or otherwise designated "Confidential." For the purposes of this rule, all design, operating specifications, and metering data provided by the interconnection customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such. Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities, or necessary to be divulged in an action to enforce these procedures.

(6) "Electric distribution system" means that portion of an electric system that delivers electricity from transformation points on the transmission system to the point or points of connection at a customer's premises.

(7) "Equipment package" means, for certification purposes, a group of components connecting a generating facility's device for the production electricity (i.e., a generator) with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric production source. An equipment package does not include equipment provided by the utility.

(8) "Fault current" means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. A fault current is several times larger in magnitude than the current that normally flows through a circuit.

(9) "Facilities study" means a study conducted to determine the additional or upgraded distribution system facilities necessary to interconnect a generating facility with a public utility, the cost of those facilities, and the time schedule required to interconnect the generating facility to the public utility's distribution system.

(10) "Feasibility study" means a preliminary evaluation of the system impact and the cost of interconnecting a generating facility to the public utility's electric distribution system.

(11) "Generating facility" means the interconnection customer's device for the production of electricity and all associated components up to the point of common coupling identified in the interconnection request, but shall not include the interconnection customer's interconnection facilities.

(12) "Generation capacity" means the nameplate capacity of the power generating device(s) of a generating facility. Generation capacity does not include the effects caused by inefficiencies of power conversion or plant parasitic loads.

(13) "Good utility practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the public utility.

(14) "Governing Authority" means

(a) For a distribution electrical cooperative, its board of directors; and

(b) for each other electrical corporation, the Public Service Commission, otherwise referred to as the commission.

(15) "IEEE standards" means the Institute of Electrical and Electronics Engineers (IEEE) Interconnecting Distributed Resources with Electric Power Systems -- IEEE 1547 Series referenced in Section 54-15-102.

(16) "Interconnection agreement" means a standard form agreement between an interconnection customer and a public utility that governs the connection of a generating facility to the electric distribution system and the ongoing operation of the generating facility after it is connected to the system.

(17) "Interconnection customer" means any entity including a public utility that proposes to interconnect its generating facility with the public utility's distribution system.

(18) "Interconnection Facilities" means the facilities and equipment required by a public utility to accommodate the interconnection of a generating facility to the public utility's electric distribution system and used exclusively for that interconnection. Interconnection Facilities do not include upgrades.

(19) "Interconnection request" means the interconnection customer's request to interconnect a new generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the public utility. The interconnection request includes all required applications, forms, processing fees and/or deposits required by the public utility.

(20) "Inverter" has the same meaning as in Section 54-15-102.

(21) "Level 1 Interconnection Review" means an interconnection review process applicable to an inverter-based facility having a generation capacity of 25 kilowatts or less.

(22) "Level 2 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of 2 megawatts or less and that does not qualify for or fails to meet Level 1 interconnection review requirements.

(23) "Level 3 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of greater than 2 megawatts but no larger than 20 megawatts, or the generating facility is not certified, or the generating facility does not qualify for or fails to meet Level 1 or Level 2 interconnection review requirements.

(24) "Net metering facility" means a facility eligible for net metering, or an eligible facility as defined in Section 54-15-102.

(25) "Party or parties" means the public utility and/or the interconnection customer.

(26) "Point of common coupling" means the point at which the interconnection between the public utility's system and the interconnection customer's equipment interface occurs.

Typically, this is the customer side of the public utility's meter.

(27) "Public utility" has the meaning set forth in Section 54-2-1 and is limited to a public utility that provides electric service.

(28) "Queue position" means the order of a valid interconnection request relative to all other pending valid interconnection requests that is established based upon the date and time of receipt of a completed interconnection request, including application fees, by the public utility.

(29) "Spot network" means a type of electric distribution system that uses two or more inter-tied transformers protected by network protectors to supply an electrical network circuit. A spot network is generally used to supply power to a single customer or a small group of customers.

(30) "Standard form" or "standard form agreement" means a form or agreement that follows that adopted or approved by the Federal Energy Regulatory Commission in its small generator interconnection proceedings and modified to be consistent with these rules unless the governing authority has approved an alternative form or agreement.

(31) "Switchgear" has the same meaning as in Section 54-15-102.

(32) "System Impact study" means an engineering analysis of the probable impact of a generating facility on the safety and reliability of the public utility's electric distribution system.

(33) "Telemetry" means the remote communication from a generator facility to a point on the public utility's communication network where the data can be assimilated into the public utility's grid operations if desired.

(34) "UL1741" means the UL Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources as referenced in Section 54-15-102.

(35) "Upgrades" means the required additions and modifications to a public utility's distribution system beyond the point of interconnection. Upgrades do not include interconnection facilities.

(36) "Written notice" means a required notice sent by the utility via electronic mail if the interconnection customer has provided an electronic mail address. If the interconnection customer has not provided an electronic mail address, or has requested in writing to be notified by United States mail, or if the utility elects to provide notice by United States mail, then written notices from the utility shall be sent via First Class United States mail. The utility shall be deemed to have fulfilled its duty to respond under this rule on the day it sends the interconnection customer notice via electronic mail or deposits such notice in First Class mail. The interconnection customer shall be responsible for informing the utility of any changes to its notification address.

R746-312-3. Purpose, Scope, Applicability and Exceptions.

(1) This rule establishes procedures for electrical interconnection of a generating facility to a public utility's distribution system with the following exception:

(a) All references to fees and charges in Section R746-312 do not apply to public utilities for which the commission does not have ratemaking authority as identified in Subsection 54-7-12(7). Rates and charges will be determined by the public utility's governing authority in accordance with applicable law.

(2) For good cause shown, the commission may waive or modify any provision of this electrical interconnection rule.

(3) A public utility and interconnection customer may mutually agree to reasonable extensions to the required times for notices and submissions of information set forth in this rule for the purpose of allowing efficient and complete review of an interconnection request. If a public utility unilaterally seeks waiver of the time lines set forth in this rule, the commission may consider the number of pending applications for interconnection review and the type of applications, including review level and facility size.

(4) A public utility shall provide to the interconnection customer information regarding options for complaint or dispute resolution during the interconnection request review process prior to or along with the results of the initial interconnection review.

(5) Complaints or disputes will be addressed as follows:

(a) residential interconnections will be addressed according to the provisions of Sections R746-200-4, R746-200-8 and R746-200-9.

(b) non-residential interconnections will be addressed according to the following procedure:

(i) In the event of a complaint or dispute, either party shall provide the other party with a written Notice of Dispute. Such notice shall describe in detail the nature of the dispute.

(ii) If the dispute has not been resolved within seven business days after receipt of such notice, the dispute shall be served upon the other party and filed with the commission. A copy shall also be served upon the Division of Public Utilities.

(iii) An answer or other responsive pleading to the complaint shall be filed with the commission not more than ten business days after receipt of service of the complaint or dispute. Copies of the answer or responsive pleading shall be served on the complainant and the Division of Public Utilities.

(iv) A prehearing conference shall be held not later than 15 business days after the complaint is filed.

(v) The commission shall commence a hearing on the complaint not later than 25 business days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable. Parties shall be entitled to present evidence as provided by the commission's rules.

(vi) The commission shall take final action on a complaint not more than 30 business days after the complaint is filed unless:

(A) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or

(B) the parties agree to an extension of final action by the commission.

R746-312-4. Installation, Operation, Maintenance, Testing and Modification of Generating and Interconnection Facilities.

(1) Except for generating facilities in operation or approved for operation prior to the effective date of this rule, an interconnection customer of a public utility must install, operate and maintain its generating and interconnection facilities in compliance with the IEEE standards, as applicable, and the requirements of the interconnection agreement or other agreements executed between the parties during the interconnection review and approval process. Generating facilities in operation or approved for operation prior to the effective date of this rule must be operated and maintained in accordance with the requirements of all agreements in place prior to the effective date of this rule.

(2) Disconnect Switch. Except for the exemptions listed below, an interconnection customer of a public utility must install and maintain a manual disconnect switch that will disconnect the generating facility from the public utility's distribution system. The disconnect switch must be a lockable, load-break switch that plainly indicates whether it is in the open or closed position. The disconnect switch must be readily accessible to the public utility at all times and located within 10 feet of the public utility's meter.

(a) Exemptions:

(i) For customer generating systems of 10 kilowatts or less

that are inverter-based, a public utility shall not require a disconnect switch.

(ii) The disconnect switch may be located more than 10 feet from the public utility's meter if permanent instructions are posted in letters of appropriate size at the meter indicating the precise location of the disconnect switch. In this case the public utility must approve in writing the location of the disconnect switch prior to the installation of the generating facility. For those instances where the interconnection customer and the public utility cannot agree to the implementation of this section, the public utility or interconnection customer may refer the matter to the commission according to the designated dispute resolution process.

(iii) Nothing in this exemption precludes an interconnection customer or a public utility from voluntarily installing a manual disconnect switch.

(3) In the event that no disconnect switch is installed, the interconnection customer's electric service may be disconnected by the public utility entirely if the generating facility must be physically disconnected from the public utility's distribution system as specified in Subsection R746-312-4(5).

(4) For those public utilities whose governing authority, pursuant to Section 54-15-106, after appropriate notice an opportunity for public comment, elects to adopt by rule additional reasonable interconnection safety, power quality and interconnection requirements for net metering generating facilities and who determines that a disconnect switch for net metering generating facilities less than 10 kilowatts is necessary, those public utilities must:

(a) address the usage of the disconnect switch in the public utility's operations training requirements and standard operating procedures, including, among other things, how the disconnect switches will be managed, including tracking of switches, the procedures under which the disconnect switch must be used during normal operations, construction projects, trouble situations, and during restoration of service activities, and training on operation and usage of the disconnect switch;

(b) file a copy of the disconnect switch procedures, and any updates, along with the governing authority's documentation of appropriate notice and opportunity for public comment with the commission; and

(c) document in writing each time the public utility has utilized each specific disconnect switch and the reason for its usage and make this information available to the commission upon request.

(5) The public utility may operate the manual disconnect switch or disconnect the customer generating facility pursuant to the conditions set forth below, thereby isolating the customer generating system, without prior notice to the customer. To the extent practicable, however, prior notice shall be given. If prior notice is not given, the utility shall at the time of disconnection leave a door hanger or other such notice notifying the customer that their customer generating system has been disconnected, including an explanation of the condition necessitating such action. The public utility shall reconnect the customer generating system as soon as reasonably practicable after the condition necessitating disconnection is remedied.

(a) Any of the following conditions shall be cause for the public utility to manually disconnect a generating facility from its system:

(i) Emergencies or maintenance requirements on the public utility's distribution system;

(ii) Hazardous conditions existing on the public utility's distribution system that may affect safety of the general public or public utility employees due to the operation of the customer generating facility or protective equipment as determined by the public utility; or

(iii) Adverse electrical effects (such as high or low voltage, unacceptable harmonic levels, or RFI interference) on the electrical equipment of the public utility's other electric consumers caused by the customer generating facility as determined by the public utility.

(6) Subsequent to becoming interconnected to a public utility the interconnection customer must notify the public utility of all proposed modifications to the generating facility or equipment package that will increase the generation capacity of a customer generation facility.

(a) Notification must be provided in the form of a new application submitted in accordance with the level of review required by this rule; and

(b) The application must specify the proposed modification(s).

(7) Aggregating Multiple Generators: If the interconnection request is for a generating facility which includes multiple generating facilities at a site for that the interconnection customer seeks a single point of interconnection, the interconnection request must be evaluated for the purposes of the interconnection on the basis of the aggregate electric nameplate capacity of the generating facilities.

R746-312-5. Certifications.

(1) To qualify for the Level 1 and the Level 2 interconnection review procedures set forth below, a generating facility must be certified as complying with the following standards, as applicable:

(a) IEEE standards; and

(b) UL1741.

(2) An equipment package will be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with relevant codes and standards.

(3) If the equipment package has been tested and listed in accordance with this section as an integrated package that includes a generator or other electric source, the equipment package will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

(4) If the equipment package includes only the interface components (switchgear, inverters, or other interface devices), an interconnection customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and consistent with the testing and listing specified for the package. If the generator or electric source being utilized with the equipment package is consistent with the testing and listing performed by the nationally recognized testing and certification laboratory, the equipment package will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

R746-312-6. General Interconnection Request Provisions.

(1) Each public utility must designate an employee, office, or department from which a customer can obtain basic interconnection request standard forms, standard form agreements, and information through an informal process. Upon request, this employee, office, or department must provide all relevant forms, documents, and technical requirements for submittal of a complete application for interconnection review. Upon request, the public utility must meet with a customer who qualifies for Level 2 or Level 3 interconnection review, to assist them in preparation of the application. All standard forms and standard form agreements must be posted on the public utility's website.

(2) The interconnection customer must submit each interconnection request, and all associated forms and agreements on the public utility's standard forms and standard form agreements.

(3) The interconnection request may require the following types of information:

(a) the name of the applicant and basic customer information;

(b) the type, size and specifications of the generating facility;

(c) the level of interconnection review sought; e.g., Level 1, Level 2 or Level 3;

(d) the generating facility installer: i.e., for contractor installations, the name of the appropriately licensed contractor, or for self-installations, the name of the homeowner or business;

(e) equipment and/or system certifications;

(f) the anticipated date the generating facility will be operational;

(g) evidence of site control; and/or

(h) other information that the utility deems is necessary to conduct an evaluation as to whether a generating facility can be safely and reliably connected to the public utility in compliance with this interconnection rule.

(4) Each interconnect request submitted to a public utility must be accompanied by the required processing fee.

(5) An interconnection customer shall retain its original queue position for an interconnection request if the applicant resubmits its application at a higher level of review within 30 business days of a utility's denial of the application at a lower level of review.

(6) A public utility shall not be responsible for the cost of determining the rating of equipment owned or proposed by an interconnection customer or of equipment owned by other local customers.

(7) Any modification to machine data or equipment configuration or to the interconnection site of the generating facility not agreed to in writing by the public utility and the interconnection customer may be deemed a withdrawal of the interconnection request and may require submission of a new interconnection request unless proper notification to each party by the other and a reasonable time to cure the problems created by the changes are undertaken.

(8) Each party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without prior written authorization from the party providing that information, except to fulfill obligations under this rule, or to fulfill legal or regulatory requirements. Each party shall employ at least the same standard of care to protect confidential information obtained from the other party as it employs to protect its own confidential information.

R746-312-7. Level 1 and Level 2 Interconnection Review Screens.

(1) The public utility shall perform its review of Level 1 and Level 2 interconnection requests using the screens set forth below as applicable.

(a) A generating facility's point of common coupling must be on a portion of the public utility's distribution system that is under the interconnection jurisdiction of the commission and not be on a transmission line.

(b) For interconnection of a proposed generating facility to a radial distribution circuit, the aggregate generation on the distribution circuit, including the proposed generating facility, must not exceed 15 percent of the distribution circuit's total highest annual peak load, as measured at the substation. For the purposes of this subsection, annual peak load will be based on measurements taken over the 60 months previous to the submittal of the application, measured for the circuit at the nearest applicable substation.

(c) The proposed generating facility, in aggregation with other generation on the distribution circuit to which the proposed generating facility will interconnect, must not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary)level nearest the proposed point of common coupling.

(d) If the proposed generating facility is to be connected to a single-phase shared secondary, the aggregate generation capacity connected to the shared secondary, including the proposed generating facility, must not exceed 20 kilowatts.

(e) If a proposed single-phase generating facility is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the proposed generating facility must not create a current imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

(f) No construction of facilities by the public utility on its own system shall be required to accommodate the generating facility.

(g) The aggregate generation capacity on the distribution circuit to which the proposed generating facility will interconnect, including the capacity of the proposed generating facility, must not cause any distribution protective equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the electric distribution system, to exceed 90 percent of the short circuit interrupting capability of the equipment. In addition, a proposed generating facility must not be connected to a circuit that already exceeds 90 percent of the circuit's short circuit interrupting capability, prior to interconnection of the facility.

(h) Interconnection Type Screen:

(i) For a proposed generating facility connecting to a three-phase, three wire primary public utility distribution line, a three-phase or single-phase generator must be connected phase-to-phase.

(ii) For a proposed generating facility connecting to three-phase, four wire primary public utility distribution line, a three-phase or single-phase generator must be connected line-to-neutral and must be effectively grounded.

(i) If there are known or posted transient stability limitations to generating units located in the general electrical vicinity of the proposed point of common coupling, including, but not limited to within three or four transmission voltage level busses, the aggregate generation capacity, including the proposed generating facility, connected to the distribution low voltage side of the substation transformer feeding the distribution circuit containing the point of common coupling may not exceed 10 megawatts.

(j) If a proposed generating facility's point of common coupling is on a spot network, the proposed generating facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, must not exceed the smaller of five percent of a spot network's maximum load or 50 kilowatts.

R746-312-8. Level 1 Interconnection Review.

(1) A generating facility that meets the following criteria is eligible for Level 1 interconnection review:

(a) the generating facility is inverter-based; and

(b) the generating facility has a capacity of 25 kilowatts or less.

(2) A public utility shall process, evaluate, and approve, if appropriate, all Level 1 interconnection requests according to this Subsection unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 1 interconnection request within 15 business days of receipt of the interconnection request, or the public utility completes final approval of a Level 1 interconnection request within 15 business days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 1 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt, the public utility shall evaluate the interconnection request and notify the interconnection customer whether the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using screens set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer that either:

(i) the generating facility meets all applicable criteria and the interconnection request is approved; or

(ii) the generation facility has failed to meet one or more of the applicable criteria, the reason for the failure, and the interconnection request is denied under the Level 1 interconnection process. If the interconnection request is denied the interconnection customer may resubmit the application under the Level 2 or Level 3 interconnection review procedure, as appropriate.

(e) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(f) The customer and the public utility may mutually agree to terms that vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(g) If a public utility does not notify a Level 1 interconnection customer in writing or by electronic mail whether the interconnection request is approved or denied within 25 business days after the receipt of an application, the interconnection request shall be deemed approved.

(3) An interconnection customer must notify the public utility of the anticipated start date for operation of the generating facility at least ten business days prior to starting operation, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval indicating the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement with the interconnection customer, the witness test is deemed waived.

(5) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 30 business days to resolve any deficiencies. The public utility and interconnection customer may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-9. Level 2 Interconnection Review.

(1) A generating facility that meets the following criteria is eligible for Level 2 interconnection review by a public utility:

(a) the generating facility has a capacity of two megawatts or less; and

(b) the generating facility does not qualify for or fails to meet applicable Level 1 interconnection review procedures.

(2) A public utility must process, evaluate, and approve, if so determined, all Level 2 requests for interconnection according to the following steps unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 2 interconnection request within 15 business days of receipt of the interconnection request, the public utility completes final approval of a Level 2 interconnection request within 15 business days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 2 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using the screens

set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer that either:

(i) the generation facility meets all applicable criteria and the interconnection request is approved;

(ii) although the generating facility fails one or more of the screens, the public utility has determined that the generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards and the interconnection request is approved; or

(iii) the generation facility has failed to meet one or more of the screens and the reason for the failure(s), the public utility has not or could not determine from the initial reviews that the generating facility may be interconnected consistent with safety, reliability, and power quality standards, or the generating facility cannot be approved without minor modifications at minimal cost and the interconnection request is denied unless the interconnection customer is willing to consider minor modifications or further study.

(e) If the interconnection request is denied, the public utility:

(i) must offer to provide the interconnection customer with the opportunity to attend an optional customer options meeting to be convened within 10 business days of the notification of denial to discuss the options available under Subsection R746-312-9(2)(e)(ii).

(A) During the customer options meeting the public utility shall review possible interconnection customer facility modification or screen analysis and related results to determine what further steps are needed to permit the generating facility to be connected safely and reliably.

(ii) shall either at the time of the notification specified in Subsection R746-312-9(2)(d)(iii), or at the customer options meeting:

(A) offer to complete minor modifications to the public utility's distribution system and provide a non-binding good faith estimate of the cost and time-frame to make such modifications. If the interconnection customer agrees to such modifications, the interconnection customer shall agree in writing within 15 business days of the offer and submit payment for the estimated costs. The interconnection customer must pay any cost that exceeds the estimated costs within 30 calendar days of receipt of the invoice. If the costs to complete the modifications are less than the estimated costs, the public utility shall return such excess within 30 calendar days of the issuance of the invoice without interest;

(B) offer to perform a supplemental review in accordance with Subsection R746-312-9(3) if the public utility concludes that the supplemental review might determine that the generating facility could continue to qualify for interconnection pursuant to the Level 2 process, and provide a non-binding good faith estimate of the costs of such review; or

(C) obtain the interconnection customer's agreement to continue evaluating the interconnection request under the Level 3 process.

(f) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility shall provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) an inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(g) The customer and the public utility may mutually agree to terms that vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(3) Supplemental Review:

(a) If the interconnection customer agrees to a supplemental review, the interconnection customer shall agree in writing within 15 business days of the offer, and submit a deposit of the estimated costs. The interconnection customer must pay any supplemental review costs that exceed the deposit within 30 calendar days of receipt of the invoice but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such review. If the deposit exceeds the invoiced costs, the public utility shall return such excess within 30 calendar days of the invoice without interest.

(b) Within 10 business days following receipt of the deposit for supplemental review, the public utility must determine whether the generating facility can or cannot be interconnected safely and reliably and shall notify the interconnection customer that either:

(i) the generation facility can be safely and reliably interconnected, and the interconnection request is approved and the public utility shall proceed according to Subsection R746-312-9(2)(f);

(ii) interconnection customer facility modifications are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. Upon receipt of written confirmation that the interconnection customer agrees to make the necessary changes at the interconnection customer's expense, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iii) minor modification to the public utility's distribution system are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. After confirmation that the interconnection customer agrees to pay the costs of such system modifications prior to interconnection, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iv) the results of the supplemental review have not concluded that the generating facility can be interconnected consistent with safety, reliability, and power quality standards and, upon agreement by the interconnection customer, the interconnection request will continue to be evaluated under the Level 3 interconnection review process.

(4) An interconnection customer must notify the public utility of the anticipated testing and inspection date for the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(5) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval and that the generating facility is authorized/approved for parallel operation. If the public utility

does not conduct the witness test within 10 business days or by mutual agreement of the public utility and the interconnection customer, the witness test is deemed waived.

(6) If an application for Level 2 interconnection review is denied because it does not meet one or more of the requirements in this section, the applicant may resubmit the application under the Level 3 interconnection review procedure.

(7) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 45 business days to resolve any deficiencies. The public utility and the interconnection customer may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-10. Level 3 Interconnection Review.

(1) A generating facility that meets the following criteria is eligible for Level 3 interconnection review:

(a) the generating facility has a capacity of greater than two megawatts but no larger than 20 megawatts;

(b) the generating facility is not certified; or

(c) the generating facility does not qualify for or failed to meet Level 1 or Level 2 interconnection review requirements.

(2) A public utility must process, evaluate, and approve, if appropriate, all Level 3 requests for interconnection according to the following steps unless the public utility has received approval from the commission for an alternate Level 3 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business-day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Scoping Meeting. If requested, a scoping meeting shall be held as follows within 10 business days after the interconnection request is deemed complete, or as otherwise mutually agreed to by the parties:

(i) The public utility and the interconnection customer shall bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting;

(ii) The purpose of the scoping meeting is to:

(A) discuss the interconnection request and review existing studies relevant to the interconnection request; and

(B) discuss whether the public utility should perform a feasibility study or proceed directly to a system impact study, a facilities study, or an interconnection agreement;

(iii) Scoping meeting follow-up:

(A) If the parties agree that a feasibility study should be performed, the public utility shall provide the interconnection customer as soon as possible, but no later than five business days after the scoping meeting, a feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(B) If the parties agree not to perform a feasibility study but rather proceed directly to the system impact study, the public utility shall, no later than five business days after the scoping meeting, provide the interconnection customer with a system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(iv) The scoping meeting may be omitted by mutual agreement. If the scoping meeting is omitted, the public utility, if requested by the interconnection customer, must provide information pertinent to the interconnection request, such as the available fault current at the proposed interconnection location, the peak loading on the lines in the general vicinity of the generating facility, and the configuration of the distribution lines at the proposed point of common coupling, within 10 business days after the interconnection request is deemed complete.

(e) Feasibility Study. A feasibility study shall provide a preliminary evaluation of the system impact that would result from interconnecting the generating facility and the cost of interconnecting the generating facility to the public utility's electric distribution system and shall be completed as follows:

(i) For interconnection customers opting to forego a scoping meeting and proceeding directly to the feasibility study, the public utility shall provide the interconnection customer, as soon as possible but no later than 10 business days after receipt of a completed application, a standard form feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested or requires a feasibility study, either as part of or independent of a scoping meeting, must return the executed feasibility study agreement within 30 business days of receipt. A deposit of the lesser of 50 percent of the good faith estimate or earnest money of $1,000 may be required from the interconnection customer.

(iii) Within 30 business days of receipt of an executed study agreement and payment of any required deposit, the public utility shall conduct the feasibility study and notify the interconnection customer either:

(A) the feasibility study shows no potential for adverse system impacts, no facilities are required, and the interconnection request is approved, in which case the public utility shall send the interconnection customer an executable interconnection agreement within five business days;

(B) the feasibility study shows no potential for adverse system impacts however additional facilities may be required and the review process shall proceed to a facilities study. When proceeding to a facilities study, the public utility shall provide the interconnection customer a standard form facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within five business days; or

(C) the feasibility study shows the potential for adverse system impacts, and the review process shall proceed to a system impact study. When proceeding to a system impact study, the public utility shall provide the interconnection customer with a standard form system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within 15 business days of transmittal of the feasibility study report.

(iv) Any study fees will be invoiced to the interconnection customer after the feasibility study is completed and delivered

and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(f) System Impact Study. Any required system impact study (or studies) must be conducted in accordance with good utility practice and shall be completed as follows:

(i) The system impact study shall:

(A) provide details on the impacts to the electric distribution system that would result if the generating facility were interconnected without modifications to either the generating facility or to the electric distribution system;

(B) identify any modifications to the public utility's electric distribution system necessary to accommodate the proposed interconnection;

(D) focus on power flows and utility protective devices, including control requirements; and

(E) include the following elements, as applicable:

(I) a load flow study;

(II) a short-circuit study;

(III) a circuit protection and coordination study;

(IV) the impact on the operation of the electric distribution system;

(V) a stability study, along with the conditions that would justify including this element in the impact study;

(VI) a voltage collapse study, along with the conditions that would justify including this element in the impact study; and

(VII) additional elements, if justified by the public utility and approved in writing by the public utility and the interconnection customer prior to the impact study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested a system impact study, either as part of or independent of a scoping meeting or feasibility study, must return the executed impact study agreement(s) within 30 business days of receipt of the agreement. A deposit of the good faith estimated costs for each system impact study may be required from the interconnection customer.

(iii) After the applicant executes the system impact study agreement and pays any required deposit, the public utility shall complete the impact study and distribute the results to the interconnection customer within 30 business days or 45 business days for transmission impact studies, notifying the interconnection customer either:

(A) Only minor modifications to the public utility's electric distribution and/or transmission system are necessary to accommodate interconnection. In such a case, the public utility must:

(I) provide to the interconnection customer at the same time the detail of the scope of the necessary modifications, a non-binding, good faith estimate of their cost, and an executable interconnection agreement; and

(II) approve the interconnection request upon receipt from the interconnection customer the executed interconnection agreement.

(B) Modifications to the public utility's electric distribution system and/or transmission system are necessary to accommodate the proposed interconnection in which case the public utility must provide at the same time either:

(I) a non-binding, good faith estimate of the cost of the modifications, if known, and

(II) a standard form facilities study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study.

(iv) If the proposed interconnection may affect electric transmission or delivery systems other than those controlled by the public utility, operators of those other systems may require additional studies to determine the potential impact of the interconnection on those systems. If such additional studies are required, the public utility must coordinate the studies but will not be responsible for their timing. The applicant shall be responsible for the costs of any such additional studies required by another affected system. Such studies will be conducted only after the applicant has provided written authorization.

(v) Any study fees will be invoiced to the interconnection customer after the system impact study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(g) Facilities Study. The results of the facilities study shall specify a non-binding good faith cost estimate of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusion of the system impact study (or studies) in order for the interconnection customer to safely interconnect the generating facility with the public utility's electric distribution system and the time required to build and install those facilities. The following provisions apply to the facilities study:

(i) A public utility may require a deposit of the good faith estimated costs for the facilities study.

(ii) In order to remain under consideration for interconnection, the interconnection customer must return the executed facilities study agreement and any required deposit, or request an extension of time, within 30 business days.

(iii) Design for any required interconnection facilities and/or upgrades shall be performed under the facilities study agreement. The public utility may contract with consultants to perform activities required under the facilities study agreement. The interconnection customer and the public utility may agree to allow the interconnection customer to separately arrange for the design of some of the interconnection facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the public utility under the provisions of the facilities study agreement. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the public utility shall make sufficient information available to the interconnection customer in accordance with confidentiality and critical infrastructure requirements to permit the interconnection customer to obtain an independent design and cost estimate for any necessary facilities.

(iv) In cases where upgrades are required, the facilities study must be completed and the facilities study report transmitted to the interconnection customer's within 45 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed and the facilities study report transmitted to the interconnection customer in 30 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. The report and any ensuing interconnection agreement must list the conditions and facilities necessary for the generating facility to safely interconnect with the public utility's electric distribution system, and must include a non-binding, good faith estimate of the cost of those facilities

and the estimated time required to build and install those facilities.

(v) Upon completion of the facilities study and receipt of agreement of the interconnection customer to pay for interconnection facilities and upgrades identified in the facilities study, the public utility shall approve the interconnection request.

(vi) Any study fees will be invoiced to the interconnection customer after the facilities study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(h) Either prior to, along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement.

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generating facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(i) The customer and the public utility may mutually agree to terms that vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(3) An interconnection customer must notify the public utility of the anticipated testing and inspection date of the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval and that the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(5) Witness Test Not Acceptable: If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 60 business days to resolve any deficiencies. The parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-11. Interconnection Metering.

(1) Metering: For generating facilities not subject to the provisions of Section 54-15, the interconnection customer shall be responsible for the cost of the purchase and installation of any special metering and data acquisition equipment deemed necessary by the terms of the interconnection agreement unless the public utility determines otherwise. The public utility must install, maintain and operate the metering equipment. The parties must mutually grant unrestricted access to such equipment as may be necessary for the purposes of conducting routine business.

(2) For generating facilities subject to the provisions of Section 54-15, metering equipment and costs for such metering equipment shall be determined as specified in Section 54-15-103. The public utility must install, maintain and operate the metering equipment. The parties must mutually grant unrestricted access to such equipment as may be necessary for the purposes of conducting routine business.

R746-312-12. Interconnection Monitoring.

(1) Generating facilities approved and interconnected to the public utility under the Level 1 and Level 2 interconnection review processes, and generating facilities with nameplate capacities of 3 megawatts or less approved under the Level 3 interconnection review process, except as noted herein, are not required to provide for remote monitoring of the electric output by the public utilities.

(2) Generating facilities approved under Level 3 Interconnection Applications with Electric Nameplate Capacities greater than 5 MW or Level 3 Interconnection Applications where the aggregated generation on the circuit, including the interconnection customers generating facility, would exceed 50 percent of the line section annual peak load may be required to provide remote monitoring at the public utility's discretion if the public utility has required such monitoring of its own facilities.

(3) If a public utility determines monitoring data provided by telemetry is necessary for safe, reliable and efficient operations of a proposed generating facility with an electric nameplate capacity of greater than 3 megawatts to 5 megawatts, the public utility may petition the commission on a case by case basis to impose monitoring and telemetry requirements such facilities. Any such petition must be accompanied by evidence supporting telemetry needs and requirements.

(4) For generating facilities required to provide remote monitoring pursuant to Subsections R746-312-12(2) and (3), the data acquisition and transmission to a point where it can be used by the public utility's control system operations must meet the performance based standards as follows:

(a) Any data acquisition and telemetry equipment required by this rule must be installed, operated and maintained at the interconnection customer's expense.

(b) Telemetry requirements:

(i) parties may mutually agree to waive or modify any of the telemetry requirements contained herein.

(ii) the communication must take place via a Private Network Link using a Frame Relay or Fractional T-1 line or other such suitable device. Dedicated Remote Terminal Units, from the generating facility to the public utility's substation and Energy Management System are not required.

(iii) a single communication circuit from the generating facility to the public utility is sufficient.

(iv) communications protocol must be DNP 3.0 or other standard used by the public utility.

(v) the generating facility must be capable of sending telemetric monitoring data to the public utility at a minimum rate of every 2 seconds (from the output of the generating

facility's telemetry equipment to the public utility's energy management system).

(vi) the minimum data points that a generator facility is required to provide telemetric monitoring to the public utility are:

(A) net real power flowing out or into the generating facility (analog);

(B) net reactive power flowing out or into the generating facility (analog);

(C) bus bar voltage at the point of common coupling (analog);

(D) data processing gateway (DPG) heartbeat (used to certify the telemetric signal quality); and

(E) on-line or off-line status (digital).

(vii) If an interconnection customer operates the equipment associated with the high voltage switchyard interconnecting the generating facility to the public utility's distribution system, and is required by to provide monitoring and telemetry, the interconnection customer must provide the following monitoring to the public utility in addition to provisions in Subsection R746-312-12(4)(b)(vi):

(A) switchyard line and transformer MW and MVAR values;

(B) switchyard bus voltage; and

(C) switching devices status

R746-312-13. Interconnection Fees and Charges.

(1) For Level 1 interconnection review:

(a) A public utility whose rates are determined by the commission may not charge an application, or other fee, to an applicant that requests Level 1 interconnection review. However, if an application for Level 1 interconnection review is denied because it does not meet the requirements for Level 1 interconnection review, and the applicant resubmits the application under the Level 2 or Level 3 review procedure, the public utility may impose a fee for the resubmitted application, consistent with this section.

(b) All other public utilities may determine reasonable fees or charges for interconnection, however for those interconnections that fall under the provisions of Title 54, Chapter 15, the fees must be determined in accordance with Title 54, Chapter 15.

(2) For a Level 2 interconnection review:

(a) A public utility whose rates are determined by the commission may charge fees of up to $50.00 plus $1.00 per kilowatt of the generating facility's capacity to cover the costs of the interconnection request review, plus the reasonable cost of any required minor modifications to the electric distribution system or additional reviews. Costs for such minor modifications or additional review will be based on the public utility's non-binding, good faith estimates and the ultimate actual installed costs. Costs for engineering work done as part of any additional review or studies shall not exceed $100.00 per hour. A public utility may adjust the $100.00 hourly rate once each year to account for inflation and deflation.

(3) For a Level 3 interconnection review:

(a) A public utility whose rates are determined by the commission may charge fees of up to $100.00 plus $2.00 per kilowatt of the generating facility's capacity, as well as charges for actual time spent on any required impact or facilities studies. Costs for engineering work done as part of a feasibility, impact, or facilities study shall not exceed $100.00 per hour. A public utility may adjust the $100.00 hourly rate once each year to account for inflation and deflation as measured by the 12 months unadjusted Consumer Price Index for all items calculated for December of the previous year. If the public utility must install facilities in order to accommodate the interconnection of the generating facility, the cost of such facilities shall be the responsibility of the applicant.

R746-312-14. Requirements After Interconnection Approval.

(1) A public utility may not require an applicant whose facility meets the criteria for interconnection approval under the Level 1 or Level 2 interconnection review procedures to perform or pay for additional tests, except if agreed to by the applicant. In addition, a public utility may not require an interconnection customer whose net metering generating facility is in compliance with Section 54-15-106 to perform or pay for additional tests.

(2) A public utility may not charge any fee or other charge for connecting to the public utility's distribution system or for operation and maintenance of a generating facility for the purposes of generating electricity, except for the fees provided for under this interconnection rule and approved standard form agreements or determined by the governing authority.

(3) Once an interconnection has been approved under this interconnection rule, the public utility may not require an interconnection customer to test or perform maintenance on its facility except for the following and subject to the provision of Section 54-15-106:

(a) any manufacturer-required testing or maintenance;

(b) any post-installation testing necessary to ensure compliance with IEEE standards or to ensure safety;

(c) the interconnection customer replaces a major equipment component that is different from the originally installed model; and/or

(d) an annual test to be performed at the discretion of and paid for by the public utility in which the generating facility is disconnected from the public utility's equipment to ensure the inverter stops delivering power to the grid.

(4) When an approved generating facility undergoes maintenance or testing in accordance with the requirements of this interconnection rule, the interconnection customer must retain written records for three years documenting the maintenance and the results of testing.

(5) A public utility has the right to inspect an interconnection customer's facility after interconnection approval is granted, at reasonable hours and with reasonable prior notice to the interconnection customer. If the public utility discovers that the generating facility is not in compliance with the requirements of this interconnection rule or executed agreements, the public utility may require the interconnection customer to disconnect the generating facility until compliance is achieved.

(6) Subsequent to becoming interconnected to a public utility the interconnection customer must notify the public utility of all proposed modifications to the generating facility or equipment package pursuant to Subsection R746-312-4(6).

R746-312-15. Aggregation of Meters for Net Metering Interconnection.

(1) For the purpose of measuring electricity usage under the net metering program, a public utility must, upon request from an interconnection customer, aggregate for billing purposes a meter to which the net metering facility is physically attached (the designated meter) with one or more meters (the additional meter) in the manner set out in this section. This rule is applicable only when:

(a) the additional meter is located on or adjacent to the premises of the electrical corporation's customer, subject to the electrical corporation's service requirements;

(b) the additional meter is used to measure only electricity used for the interconnection customer's requirements;

(c) the designated meter and the additional meter are subject to the same rate schedule; and

(d) the designated meter and the additional meter are served by the same primary feeder.

(2) An interconnection customer must give at least 30

business days notice to the utility to request that additional meters be included in meter aggregation. The specific meters must be identified at the time of such request. In the event that more than one additional meter is identified, the interconnection customer must designate the ranking order for the additional meters to which net metering credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, are to be applied.

(3) The aggregation of meters will apply only to charges that use kilowatt-hours as the billing determinant. All other charges applicable to each meter account shall be billed to the interconnection customer.

(4) If in a monthly billing period the net metering facility supplies more electricity to the public utility than the energy usage recorded by the interconnection customer's designated meter, the utility will apply credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, to the next monthly bill for the excess kilowatt-hours first to the designated meter, then to additional meters that are on the same rate schedule as the designated meter.

(5) If an additional meter changes service to a rate schedule that is different than the designated meter, the additional meter is not eligible for net metering credits, as defined in Subsection 54-15-104(3) and approved by the governing authority, for the remainder of the billing year and until such time as the additional meter receives service on the same rate schedule as the designated meter.

(6) If the designated meter changes service to a different rate schedule, aggregation of net metering credits is not allowed for the remainder of the billing year and may not occur until such time as the additional meters receive service on the same rate schedule as the designated meter.

(7) With the governing authority's prior approval, a public utility may charge the interconnection customer requesting to aggregate meters a reasonable fee to cover the administrative costs of this provision.

R746-312-16. Public Utility Maps, Records and Reports.

(1) Each public utility shall maintain current records of interconnection customer generating facilities showing size, location, generator type, and date of interconnection authorization.

(2) By July 1 of each year, the public utility shall submit to the commission an annual report with the following summary information for the previous calendar year:

(a) the total number of generating facilities approved and their associated attributes including resource type, generating capacity, and zip code of generating facility location,

(b) the total rated generating capacity of generating facilities by resource type,

(c) for net metering interconnections, the total net excess generation kilowatt-hours received from interconnection customers by month,

(d) for net metering interconnections, the total amount of excess generation credits in kilowatt hours, and their associated dollar value that have expired at the end of each annualized billing period.

R746-312-17. Interconnection-related Agreements.

(1) Contents of Standard Interconnection Agreement. All standard form interconnection agreements shall, at a minimum, contain the following:

(a) a requirement that the generating facility must be inspected by a local building code official prior to its operation in parallel with the public utility to ensure compliance with applicable local codes.

(b) provisions that permit the public utility to inspect interconnection customer's generating facility and its component equipment, and the documents necessary to ensure compliance with this rule. The customer shall notify the public utility as required by this rule prior to initially placing customer equipment and protective apparatus in service, and the public utility shall have the right to have personnel present on the in-service date. If the generating system is subsequently modified in order to increase its gross power rating, the customer must notify the public utility by submitting a new application specifying the modifications in accordance with the level of review required for the application.

(c) a provision that the customer is responsible for protecting the generating equipment, inverters, protective devices, and other system components from damage from the normal and abnormal conditions and operations that occur on the public utility system in delivering and restoring power; and is responsible for ensuring that the generating facility equipment is inspected, maintained, and tested in accordance with the manufacturer's instructions to ensure that it is operating correctly and safely.

(d) a provision that the customer shall hold harmless and indemnify the public utility for all loss to third parties resulting from the operation of the generating facility, except when the loss occurs due to the negligent actions of the public utility and a provision that the public utility shall hold harmless and indemnify the customer for all loss to third parties resulting from the operation of the public utility's system, except when the loss occurs due to the negligent actions of the customer.

(e) Insurance:

(i) If an interconnection customer whose generating facility is no greater than two megawatts in size complies with the provisions of the interconnection request approval, interconnection agreement, and standards identified in Section 54-15-106, a public utility may not require that interconnection customer to purchase additional liability insurance.

(ii) all other interconnection customers are required to obtain prudent amounts of general liability insurance in an amount sufficient to protect other parties from any loss, cost, claim, injury, liability, or expense, including reasonable attorney fees, relating to or arising from any act or omission in its performance of the provisions of the this rule or the interconnection agreement. Neither party may seek redress from the other party in an amount greater than the amount of direct damage actually incurred. An interconnection customer of sufficient credit-worthiness may propose to self-insure for such liabilities and such proposal shall not be unreasonably rejected.

(f) identification of any fees or charges approved pursuant to this rule or applicable law.

KEY: interconnection, generating equipment, renewable energy facilities, public utilities

December 22, 2016 **54-4-7**
Notice of Continuation April 29, 2015 **54-4-14**
54-12-2
54-15-106

R746. Public Service Commission, Administration.
R746-313. Electrical Service Reliability.
R746-313-1. Authority.

(1) This rule establishes electric service reliability and continuity requirements as provided for in Utah Code Sections 54-3-1, 54-4-2 and 54-4-7.

R746-313-2. Definitions.

(1) "Customer average interruption duration index" ("CAIDI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(2) "Electric company" means an electrical corporation or a distribution electrical cooperative that is also a public utility, as defined in Utah Code 54-2-1.

(3) "Form 7 - Information on Service Interruptions" means:

(a) Part G of the United States Department of Agriculture Rural Utilities Service Form 7 Financial and Statistical Report,

(b) Part H of the National Rural Utilities Cooperative Finance Corporation Form 7 Financial and Statistical Report, or

(c) their equivalents.

(4) "Governing Authority" means:

(a) for a distribution electrical cooperative as defined in Utah Code 54-2-1(6), its board of directors; and

(b) for an electrical corporation as defined in Utah Code 54-2-1(7), the Public Service Commission of Utah, otherwise referred to as the commission.

(5) "The Institute of Electrical and Electronics Engineers Standard 1366" ("IEEE 1366") means the 2012 edition of the IEEE Guide for Electric Power Distribution Reliability Indices.

(6) "Loss of power supply"

(a) "Loss of power supply - Distribution Substation" means the loss of the electrical power supply system due to an outage/failure of a distribution substation component.

(b) "Loss of power supply - Generation/Transmission" means the loss of the electrical power supply from the electric company's own electric generator or transmission system, including transmission lines and transmission substations, or from another electric company or electric corporation.

(7) "Momentary average interruption event frequency index" ("MAIFIe") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(8) "Major event day identification threshold value" ("T_{MED}") has the same meaning as in IEEE 1366 or RUS 1730A-119.

(9) "Operating area" means a geographic subdivision of an electric company's Utah service territory that functions under the direction of an electric company office and as a separate entity used for reliability reporting within the electric company. An operating area may also be referred to as regions, divisions, or districts and may also be a reliability reporting area.

(10) "Reliability" means the degree to which electric service is supplied without interruptions to customers.

(11) "Reliability indices" means the electric service interruption indices identified in IEEE 1366 or RUS 1730A-119, as applicable.

(12) "Reliability reporting area" means a grouping of one or more operating areas, for which the electric company calculates major event thresholds.

(13) "Reporting Period" means the 12-month period, based on the previous 365 days, or 366 days for leap years, for which an electric company is tracking and reporting reliability performance.

(14) "Rules" means the Electric Service Reliability rules R746-313-1 through 8.

(15) "RUS 1730A-119" means the United States Department of Agriculture Rural Utilities Service Bulletin 1730A-119 entitled "Interruption Reporting and Service Continuity Objectives for Electric Distribution Systems," dated March 24, 2009.

(16) "System average interruption duration index" ("SAIDI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(17) "System average interruption frequency index" ("SAIFI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(18) "System-wide" means pertaining to and limited to the electric company's customers in Utah.

R746-313-3. Purpose, Scope, Applicability and Exceptions.

(1) This rule establishes requirements for each electric company to monitor and report on electric service reliability.

(2) Unless otherwise approved, an electric company whose governing authority is the commission shall:

(a) follow the provisions of IEEE 1366 in the collection and analysis of interruption data and in the calculation and reporting of reliability indices as required by these rules. If there is a conflict between any provision in IEEE 1366 and the rules, the rules govern; and

(b) include both "distribution system" interruptions and "interruptions caused by events outside of the distribution system," as defined in IEEE 1366, in the electric company's record keeping, calculations, reporting, and filing as required by R746-313-4 through R746-313-8.

(3) Unless otherwise approved, an electric company whose governing authority is not the commission shall:

(a) follow the provisions of either IEEE 1366 or the RUS Bulletin 1730A-119 in the collection and analysis of interruption data and in the calculation and reporting of reliability indices as required by these rules. If a conflict exists between any provision in IEEE 1366 or RUS 1730A-119 and the rules, the rules govern; and

(b) include both "distribution system" interruptions and interruptions caused by events outside of the distribution system in the electric company's record keeping, calculations, reporting, and filing as required by the Electric Service Reliability Rules R746-313-4 through R746-313-8.

(4) The commission may, upon written request and for good cause shown, waive or modify any provision of these rules in accordance with R746-1-109, Deviation from Rules.

R746-313-4. Electric Service Reliability.

(1) An electric company must have a written reliability program.

(2) Within 3 months after the effective date of these rules an electric company whose governing authority is the commission must file for commission approval of reliability performance baselines for SAIDI and SAIFI reliability indices.

(3) The filing required by 746-313-4(2)must include, but is not limited to:

(a) the basis for the proposed SAIDI and SAIFI values; and

(b) identification of systems and description of internal processes to collect, monitor and analyze interruption data and events including:

(i) definitions of all parameters used to calculate the proposed standards and major event days, and the time-period upon which the proposed standards are based (e.g., 12-month rolling average, 365-day rolling average, annual average);

(ii) identification of all proposed deviations from IEEE 1366 used in the calculation of reliability indices and determination of major event days; and

(iii) a description of all data estimation methods used for the collection and calculation of SAIDI, SAIFI, CAIDI, and MAIFIe.

R746-313-5. Electric Service Interruption Records.

(1) Except as provided in subsection (4) of this Section:

(a) An electric company using predominantly non-automated methods for identifying outages and tracking reliability shall keep an accurate record of each sustained interruption of service that affects one or more customers.

(b) An electric company using an electronic outage management system for identifying electric service interruptions and/or tracking outages shall keep an accurate record of each interruption of service that affects one or more customers.

(2) Each record shall contain at least the following information:

(a) the operating area where the interruption occurred;

(b) the reference identification of the substation involved;

(c) the reference identification of the circuit involved;

(d) the date and time the interruption started or was reported. If the exact time is unknown, the beginning of an interruption is recorded as the earlier of an automatic alarm or the reported initiation time;

(e) the date and time service was restored;

(f) the duration of the interruption;

(g) the number of metering points affected by the interruption;

(h) the cause of the interruption;

(i) whether the interruption was planned or unplanned;

(j) the interrupting device that made the interruption, if known; and

(k) the component involved (e.g., transmission line, substation, overhead primary main, underground primary main, transformer, etc.).

(3) For interruptions where customers are not simultaneously restored, an electric company shall keep records that document the step-restoration operations.

(4) For major events where an electric company is unable to obtain accurate data, the electric company shall make reasonable estimates and explain these estimates in any report filed with its governing authority.

(5) An electric company shall retain the records associated with this rule in accordance with R746-310-10 Preservation of Records.

R746-313-6. Inquiries about Electric Service Reliability.

(1) A customer may request a report from its electric company about the reliability of the electric service provided to the customer's own meter which the electric company must provide at no cost within 20 business days of the request. If a customer requests one or more additional reliability reports for the same meter within one year of the date of the first request, the electric company may charge the customer the cost of preparing the report(s).

(2) For an electric company whose governing authority is the commission, the report to the customer must include:

(a) The name of the customer;

(b) The date of the request;

(c) The address where the meter is installed;

(d) The meter identification number;

(e) The general identification of the equipment serving the customer; and

(f) A chronological listing of interruptions to the customer including all associated interruption data required by R746-313-5(2) covering at least the 36 months preceding the date of the request, if available. If 36 months of data are not available, the chronological listing must include all available data.

(3) For an electric company whose governing authority is not the commission, the report to the customer must include:

(a) The name of the customer;

(b) The date of the request;

(c) The address where the meter is installed;

(d) The meter identification number;

(e) The general identification of the equipment serving the customer; and

(f) A chronological listing of interruptions on the feeder serving the customer's meter including all interruption data required by R746-313-5(2) covering at least the 12 months preceding the date of the request. If 12 months of data are not available, the chronological listing must include all available data.

(4) Other than those inquiries specified in R746-313-6(1), each electric company must have a written policy for consistent treatment of all other inquiries pertaining to electric reliability. At a minimum, the electric company must provide to the inquiring party, by electronic means, the electric company's most-recently filed report on electric service reliability required by R764-313-7.

R746-313-7. Reporting on Electric Service Reliability.

(1) An electric company must report deviations from the reliability performance baselines established in accordance with R746-313-4 within 60 days after the end of the month when the deviation(s) occurred.

(2) Beginning May 1, 2013, and by May 1 of each succeeding year, an electric company shall file with the commission a report on electric service reliability for the previous calendar year. The electric company must make electronic copies of the report available to the public upon request and may charge a reasonable cost for requested paper copies.

(3) For an electric company whose governing authority is the commission, the report on electric service reliability must contain at a minimum:

(a) the calculated SAIDI, SAIFI, CAIDI, and MAIFIe reliability indices for the reporting period. At a minimum, the electric company must report this information on a system-wide basis compared with the previous four years' performance and, for SAIDI, SAIFI, and CAIDI on an operating area compared with the previous four years' performance;

(b) an analysis of the system-wide and reliability reporting area sustained interruption causes compared to the previous four-year performance. Outages may be categorized using the following cause categories:

(i) Loss of Supply - Generation/Transmission;

(ii) Loss of Supply - Distribution Substation;

(iii) Distribution - Environment (e.g., unpreventable contamination, corrosion, airborne deposits, flooding, fire/smoke not related to faults or lightning);

(iv) Distribution - Equipment Failure;

(v) Distribution - Lightning;

(vi) Distribution - Operational;

(vii) Distribution - Planned Outages;

(viii) Distribution - Public;

(ix) Distribution - Vegetation;

(x) Distribution -Weather (other than lightning);

(xi) Distribution -Wildlife;

(xii) Distribution - Unknown; and

(xiii) Distribution - Other.

(c) a listing of the major events experienced during the reporting period and a listing of significant events as defined by the electric company, their cause, and their effect on reliability performance during the reporting period;

(d) comparisons of budgeted and actual maintenance spending, maintenance activities, capital spending, vegetation management spending and vegetation management activities;

(e) identification of areas whose reliability performance warrants additional improvement efforts.

(f) a listing of the T_{MED} values that will be used for each reliability reporting area for the forthcoming annual reporting period.

(g) a summary of the changes the electric company has made or will make pertaining to the collection, calculation, estimation, and reporting of electric service reliability

information and changes in reliability reporting areas and/or operating areas; and

(h) a map showing the reliability reporting areas and/or operating areas.

(4) For an electric company whose governing authority is not the commission, the report on electric service reliability must contain, at a minimum:

(a) The reliability indices listed in Form 7 - Information on Service Interruptions based upon the cause codes listed in RUS1730A-119 ; and

(b) A summary of any estimation methods and/or an explanation of any factors used in calculating reliability indices presented in the electric company's report on electric service reliability.

R746-313-8. Major Event Reporting by Electric Utilities.

(1) Major event reporting for an electric company whose governing authority is the commission. Within 30 business days after the conclusion of each event which an electric company determines satisfies the criteria for major event classification in accordance with IEEE 1366, the electric company shall file a major event report with the commission for its consideration. The major event report must include, at a minimum:

(a) a description of the major event, the interruption causes, and a summary of restoration efforts and factors that affected restoration of service;

(b) identification of reliability reporting area and geographic area affected;

(c) the total number of customers affected, and the number of customers without service at periodic intervals;

(d) the calculated SAIDI, SAIFI, and CAIDI impacts (i.e., Event SAIDI, SAIFI, and CAIDI) associated with the major event to customers for each reliability reporting area and system-wide; and

(e) restoration of service information including resources used and cost.

(2) Major event reporting for electric company whose governing authority is not the commission. Within a timely period after each event which an electric company determines satisfies the criteria for major event classification in accordance with IEEE 1366 or RUS 1730A-119, as applicable, the electric company shall provide a major event analysis to its governing authority.

KEY: reliability, IEEE 1366, SAIDI / SAIFI, major event
February 21, 2013 **54-3-1**
Notice of Continuation April 27, 2017 **54-4-2**
54-4-7

R746. Public Service Commission, Administration.
R746-320. Uniform Rules Governing Natural Gas Service.
R746-320-1. General Provisions.

A. Scope and Applicability -- This rule applies to the methods and conditions of service used by utilities furnishing natural gas service in Utah. These rules supersede any conflicting provisions contained in tariffs of natural gas utilities subject to Commission jurisdiction. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-1-109, Deviation from Rules.

B. Definitions --

1. "British Thermal Unit" or "BTU" means the quantity of heat needed to raise the temperature of one pound of water one degree Fahrenheit.

2. "CFR" means the Code of Federal Regulations, April 1, 1994 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Cubic Foot" means:

a. when gas is supplied and metered to customers at the standard delivery pressure, as defined in Subsection R746-320-2(G), the volume of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot;

b. when gas is supplied to customers through positive displacement meters at other than standard delivery pressure, the volume of gas which occupies one cubic foot after applying a suitable correction factor to simulate delivery and metering at standard delivery pressure; the correction factor shall include allowance for gas temperature when it is reasonably practical to determine that factor;

c. when gas is supplied through other meters, the volume of gas which occupies one cubic foot at a temperature of 60 degrees Fahrenheit and at absolute pressure as provided in utility tariff rates or regulations approved by this Commission.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with gas by a gas utility subject to Commission jurisdiction.

6. "Customer Meter" means the device used to measure the volume of gas transferred from a gas utility to a customer.

7. "Main" means a distribution line that is designed to serve as a common source of supply for more than one service line. The term does not include service lines.

8. "Service Line" means a distribution line that transports gas from a common source of supply to:

a. a customer meter or the connection to a customer's piping, whichever is farther downstream, or

b. the connection to a customer's piping if there is no customer meter.

9. "Therm" means a unit of heating value equaling 100,000 BTU.

10. "Utility" means a gas corporation as defined in Section 54-2-1.

R746-320-2. Quality Control Equipment, Standards, Records and Reports.

A. Testing Equipment and Facilities --

1. Utilities shall own and maintain or have access to the testing equipment necessary to make Commission-required tests of the gas sold by the utilities. The Commission may approve arrangements for individual utilities to have their testing done by another utility or competent party.

2. Utilities shall properly maintain testing equipment which shall be subject to Commission inspection. The Commission may inspect the testing equipment at reasonable times.

3. Utilities shall locate and use testing equipment so as to ensure that gas samples taken are fairly representative of the gas being distributed in the portion of the system being tested.

B. Heating Value --

1. Utilities shall file with the Commission, as part of their tariffs, the range within which the average heating value per unit of gas to be sold will fall.

2. Utilities shall maintain the heating value established in their tariffs and in so doing shall regulate the chemical composition and specific gravity of the gas so as to maintain satisfactory combustion in customers' appliances without repeated adjustment of the burners.

3. When utilities distribute supplemental or substitute gas, they shall ensure that it performs satisfactorily regardless of heating value.

C. Heating Value Tests, Records, and Reports --

1. Utilities shall make sufficient tests, or have access to tests made by their suppliers, to accurately determine the heating value of the gas sold.

2. Tests shall be made at a location, or locations, which will ensure the samples taken fairly represent the gas being furnished to the utilities and their customers. Test reports shall be available for review when requested by the Commission.

D. BTU Measurement Equipment --

1. Utilities shall maintain or have access to an approved type calorimeter in an adequate testing station as specified in Subsection R746-320-2(C)(1). Utilities may use an approved recording calorimeter which shall be checked at least once each month with an approved standard calorimeter or against a standard gas.

2. Both calorimeter and method of testing shall be subject to Commission inspection.

3. Utilities may use BTU measuring equipment other than calorimeters upon petition to and approval by the Commission.

E. Gas Odor -- Gas supplied to customers shall be odorized in accordance with 49 CFR 192.625, which is incorporated by this reference.

F. Purity of Gas -- Gas supplied to customers shall contain no more than 75 to 80 parts per million of total sulfur. Gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered.

G. Standard Delivery Pressure -- Standard Delivery Pressure shall be four ounces above local atmospheric pressure. Maximum and minimum low pressure delivery pressures shall conform to 49 CFR 192.623, which is incorporated by reference.

H. Pressure Testing and Maintenance of Standards --

1. Utilities shall make every reasonable effort to maintain adequate gas pressure. Utilities shall make determinations and keep records of pressures adequate to enable the utilities at all times to have accurate current knowledge of the pressure existing in their distribution systems. Pressure records shall be properly identified, dated, and filed in the utilities' records.

2. Utilities shall periodically test and maintain the accuracy of any recording pressure gauges.

3. Pressure limiting and regulator stations shall comply with 49 CFR 192.741, which is incorporated by this reference.

R746-320-3. Use, Location, and Accuracy Tests of Meters.

A. Use of Meters -- Gas sold by utilities shall be metered through approved meters except in case of emergency, or when otherwise authorized by the Commission as provided in R746-1-109, Deviation from Rules. Meters shall bear an identifying number and shall be plainly marked to show the units of the meter index. When gas is delivered at higher than standard pressure, the contract, rate schedule, or gas bill shall specify the method to be used to correct the gas volume to standard pressure.

B. Meter Location -- Meters may be located either inside or outside of buildings. The locations selected by utilities and provided by customers shall be convenient for inspection and reading of the meters and shall comply with 49 CFR 192.353, 192.355, 192.357, incorporated by reference.

C. Meter Accuracy at Installation -- New meters and reinstalled meters shall be no more than one percent fast or two percent slow.

D. Initial Tests of Meters -- Meters shall be tested and meet the foregoing accuracy limits before installation. When meters are placed into service, the meter index reading shall be recorded.

E. Periodic Tests of Meters --

1. Utilities shall adopt schedules for periodic tests and repairs of positive displacement meters. Utilities shall keep records of accuracy of meters periodically tested and shall analyze the records to determine meter service life for purposes of adjusting the periods for testing and servicing meters.

2. Unless a time extension or a statistical sampling method is approved by the Commission, meter test intervals for displacement meters of the following rated capacities shall not exceed the following:

TABLE

a.	To 300 cu. ft./hr	10 yrs
b.	300 to 600 cu. ft./hr	5 yrs
c.	600 to 1,500 cu. ft./hr	3 yrs
d.	Over 1,500 cu. ft./hr	2 yrs
e.	Orifice Meters, inspected and checked for accuracy	1 yr

F. Meter Tests by Request --

1. Upon written request, utilities shall test a customer's meter promptly. If a meter has been tested within 12 months preceding the date of the request, the utility concerned may require the customer to make a deposit to defray the costs of the test. If the meter is found to be more than three percent inaccurate, either over or under, the deposit shall be refunded; otherwise the deposit may be processed by the utility as a service charge. The deposit shall not exceed the estimated cost of performing the test.

2. The customer shall be entitled to observe the test and the utility shall forward a copy of the written report of the test to the customer.

G. Referee Meter Tests -- If there is a dispute over a test, the customer concerned may request a referee test in writing. The Commission may require the deposit of a testing fee in connection with a referee test to defray costs of the test. Upon filing of the request and receipt of the deposit, if needed, the Commission shall notify the utility and the utility shall not remove the meter until the Commission so instructs. The meter shall be tested in the presence of the Commission's representative, and if the meter is found to be more than three percent inaccurate, the customer's deposit may be refunded; otherwise it may be kept.

H. Billing Adjustments for Meter Variance --

1. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent fast, there shall be refunded to the customer the amount billed in error for one-half the period since the last test. The one-half period shall not exceed six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond, that date.

2. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent slow, the utility may bill the customer in an amount equal to the unbilled error for one-half the period since the last test, that one-half period shall not exceed six months.

3. When there is a nonregistering meter, the customer may be billed on an estimate based on previous bills for similar usage. The estimated period shall not exceed three months.

4. When there is unauthorized use, the customer may be billed on a reasonable estimate of the gas consumed.

I. Standard Meter Test Methods -- Meter tests shall be made by trained personnel using approved methods and testing equipment. The methods and apparatus recommended in the Gas Displacement Standard, Second Edition 1985, published by the American Gas Association and incorporated by this reference, may be used to satisfy this rule.

J. Meter Testing Equipment -- Utilities shall own and maintain, or have access to, at least one five-cubic-foot prover of an approved type, as well as other equipment necessary to test meters. Meter testing equipment shall be installed in a meter testing station designed for that purpose.

K. Records of Meter Tests -- Utilities shall record the original data of meter tests on standard forms and preserve the data until the next time meters are tested.

L. Meter Records -- Utilities shall keep permanent records of their meters. Utilities shall start a record for each meter when purchased and include the date of purchase, identification number, manufacturer's name, type, and rating. Utilities shall keep records of any tests, adjustments, and repairs. Utilities shall keep records of meter readings when the meters are installed or removed from service together with the addresses of customers served. The meter records shall be systematically kept and filed until the meters are retired.

R746-320-5. Design, Construction, and Operation of Plant.

A. Generally --

1. Facilities owned or operated by utilities and used in furnishing gas shall be designed, constructed, maintained and operated so as to provide adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers, and others may be subjected from their equipment and facilities.

2. Utilities shall use accepted good practice of the gas industry, but in no event shall those practices be construed to require less than required by this rule, R746-409, Pipeline Safety in Utah, Chapter 13 of Title 54, and the federal Natural Gas Pipeline Safety Act, 49 U.S.C. Section 1671 et seq.

B. Regulators -- If the gas pressure maintained in a customer's service line exceeds the standard delivery pressure, the utility concerned shall install an approved service regulator on the service line on the customer's premises. The regulator shall be set to deliver gas within the established delivery pressure range and shall have a vent piped to the outdoors if the regulator is located within a building. If pressure in the service line exceeds 100 p.s.i.g., a primary regulator, in addition, shall be installed on the service line outside the building. Regulators shall not be required for service of industrial or commercial customers served through high pressure meters.

C. Main Extensions -- Utilities shall adopt, with Commission approval, uniform rules and regulations governing main extensions.

D. Installation and Maintenance of Service Lines and Meters --

1. Utilities shall furnish, install and maintain, free of charge, a gas service line from the gas main adjacent to customers' premises to the customers' property lines or curbs, except that utilities shall not be required to install the piping on the outlet side of meters.

2. Customers may be required by utilities to install or pay in full or in part for gas service lines from property lines to customers' buildings in accordance with approved tariffs.

3. Service lines and meters shall be owned and maintained by utilities.

E. Service Lines for Temporary Service --

1. Utilities may provide temporary service to customers and may require the customers to bear any costs, in excess of any salvage value realized, of installing and removing service lines.

2. Temporary service shall be considered service provided for emergency or short-term use, as specified in approved tariffs,

or service for speculative operations or those of questionable permanency.

F. Gas Service Line Valves --

1. New gas service lines, entering customers' buildings, which are operating at a pressure greater than 10 p.s.i.g., and other service lines two inches or larger, I.P.S., shall be equipped with a gas service line valve located on the service line outside buildings served. If a service line valve is underground, it shall be located in a durable curb box at an easily-accessible location. The top of the curb box shall be at ground level and shall be kept visible by the customer.

2. Service lines shall be equipped with a gas service line valve near the meter. If a service line is not equipped with an outside shut-off, the inside shut-off shall be a type which can be sealed in the off position.

R746-320-6. Records.

A. Maps and Records --

1. Utilities shall keep suitable maps or records to show size, location, character, and date of installation of major plant items.

2. Upon Commission request, and in form specified by or satisfactory to the Commission, utilities shall file adequate descriptions or maps showing the location of facilities.

B. Operating Records --

1. Utilities shall keep appropriate operating records for use in statistical and analytical studies for regulatory purposes.

2. Operating records shall be subject to Commission inspection at reasonable times.

C. Availability of Records -- Utilities shall keep any records made mandatory by these rules at the utilities' offices in Utah. Commission representatives may inspect mandatory records at reasonable times and in a reasonable manner during normal operating hours.

D. Reports to the Commission -- Utilities shall furnish to the Commission, at times and in form designated by the Commission, the results of required tests and summaries of mandatory records. At Commission request, utilities shall also furnish the Commission with information concerning facilities or operations.

E. Preservation of Records -- The Commission adopts the standards of 18 CFR 225, incorporated by reference, to govern the preservation of records of natural gas utilities subject to the jurisdiction of the Commission.

R746-320-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts 18 CFR 201, incorporated by this reference, as the uniform system of accounts for gas utilities subject to Commission jurisdiction. Utilities shall use this system.

B. Uniform List of Retirement Units of Property -- The Commission adopts 18 CFR 216, incorporated by this reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of gas plant. Utilities subject to Commission jurisdiction shall use this schedule.

R746-320-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer before the current billing cycle.

2. A "catch-up bill" is a bill based on an actual reading provided after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been provided under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-320-8(D).

C. Limitations on Providing a Backbill -- A utility shall not provide a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling and the correct calculation to be used in the backbill has been determined. This limitation does not apply to fraud, theft of service, and denial of access to meter situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service provided more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. When there is customer fraud, theft of service, or denial of access to the meter, the utility shall estimate a bill for the period over which the fraud or theft was perpetrated or that denial of access occurred. The time limitations of Subsection R746-320-8(D)(1) do not apply to customer fraud or theft situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period and Interest -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. However, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case where there has been fraud or theft, interest will be assessed from the time the original payment was due.

R746-320-9. Overbilling.

A. Standards and Criteria for Overbilling -- Billing under the following conditions constitutes overbilling:

1. a meter registering more than three percent fast, or a defective meter;

2. use of an incorrect heat value multiplier;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a crossed meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and

8. incorrect estimated demand billings by the utility.

B. Interest Rate --

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations --

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle after the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills, whichever is less. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, when credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment. For all overbilling conditions specified in 746-320-9.A, except for crossed meter conditions specified in 746-320-9.A.4 not caused by the utility, an exception to the 24 month limitation period applies when the overbilling can be shown to be due to some cause, the date of which can be fixed. In this instance the overcharge shall be computed back to that date and the entire overcharge shall be refunded.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known about an overpayment, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of this rule provision.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

KEY: rules and procedures, public utilities, utility service shutoff

January 7, 2013 **54-2-1**

Notice of Continuation May 17, 2017 **54-4-1**

54-4-7

54-4-18

54-4-23

R746. Public Service Commission, Administration.
R746-340. Service Quality for Telecommunications Corporations.
R746-340-1. General.

A. Application of Rules -- These rules promulgated herein shall apply to each telecommunications corporation, as defined in Subsection 54-8b-2.

1. These rules govern the furnishing of communications services and facilities to the public by a telecommunications corporation subject to the jurisdiction of the Commission. The purpose of these rules is to establish reasonable service standards to the end that adequate and satisfactory service will be rendered to the public.

2. The adoption of these rules by the Commission shall in no way preclude it from altering or amending its rules pursuant to applicable statutory procedures, nor shall the adoption of these rules preclude the Commission from granting temporary exemptions to rules in exceptional cases as provided in R746-1-109, Deviation from Rules.

B. Definitions -- In the interpretation of these rules, the following definitions shall apply:

1. "Allowed Service Disruption Event" -- an event when a telecommunications corporation is prevented from providing adequate service due to:

a. A customer's act;

b. A customer's failure to act;

c. A governmental agency's delay in granting a right-of-way or other required permit;

d. A disaster or an act of nature that would not have been reasonably anticipated and prepared for by the telecommunications corporation;

e. A disaster of sufficient intensity to give rise to an emergency being declared by state government;

f. A work stoppage, which shall include a grace period of six weeks following return to work;

g. A cable cut outside the telecommunications corporation's control affecting more than 20 pairs.

h. A public calling event, busy calling or dial tone loss due to mass calling or dial-up event;

i. Negligent or willful misconduct by customers or third parties including outages originating from the introduction of a virus onto the telecommunications corporation's network or acts or terrorism.

2. "Central Office" -- A building that contains the necessary telecommunications equipment and operating arrangements for switching, connecting, and inter-connecting the required local, interoffice, and interexchange services for the general public.

3. "Central Office Area" -- A geographic area served by a central office.

4. "CFR" means the Code of Federal Regulations, 2000 edition.

5. "Choke Network Trunk Groups" -- A network with special trunking and special prefixes in place to manage the use of mass-calling-numbers.

6. "Commission" -- Public Service Commission of Utah.

7. "Commitment" -- A promise by a telecommunications corporation to a customer specifying a date and time to provide a service.

8. "Customer" -- A person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency, provided with telecommunications services by a telecommunications corporation.

9. Customer trouble reports include:

a. "Trouble Report" -- A customer report attributable to the malfunction of a telecommunications corporation's facilities and includes repeat trouble reports.

b. "Out of Service Trouble Report" -- A report used when a customer reports there is neither incoming nor outgoing telecommunications capability.

c. "Repeat Trouble Report" -- A report received on a customer access line within 30 days of a closed trouble report.

10. "Exchange" -- A unit established by a telecommunications corporation for the administration of telecommunication services in a specified geographic area. It may consist of one or more central office areas together with associated outside plant facilities used in furnishing telecommunications services in that area.

11. "Exchange Service Area" -- The geographical territory served by an exchange.

12. "Held Order" -- A request for basic exchange line service delayed beyond the initial commitment date due to a lack of facilities which the telecommunications corporation is responsible for providing.

13. "Interconnection Trunk Group" -- Connects the telecommunications corporation's central office or wire center with another telecommunications corporation's facilities.

14. "Local Access Line" -- A facility, totally within one central office area, providing a telecommunications connection between a customer's service location and the serving central office.

15. "Out of Service" -- When there exists neither incoming nor outgoing telecommunication capability.

16. "Party Line Service" -- A grade of local exchange service which provides for more than one customer to be served by the same local access line.

17. "Price List" -- The terms and conditions upon which public telecommunications services are offered that is filed by a telecommunications corporation that is subject to pricing flexibility pursuant to 54-8b-2.3.

18. "Tariff" -- A portion or the entire body of rates, tolls, rentals, charges, classifications and rules, filed by the telecommunications corporation and approved by the Commission.

19. "Telecommunications Corporation" -- A "telephone corporation" as defined in Section 54-2-1.

20. "Voice Grade Service" -- Service that at a minimum, includes:

a. providing access to E911, which identifies the exact location of the emergency caller;

b. Two-way communications with a clear voice each way;

c. Ability to place and receive calls; and

d. Voice band between 300 HZ and 3000 HZ.

21. "Wire Center" -- The building in which one or more local switching systems are installed and where the outside cable plant is connected to the central office equipment.

R746-340-2. Records and Reports.

A. Availability of Records -- Each telecommunications corporation shall make its books and records open to inspection by representatives of the Commission, the Division of Public Utilities, or the Office of Consumer Services (or any successor agencies) during normal operating hours.

B. Retention of Records -- All records required by these rules shall be preserved for the period of time specified at 47 CFR 42, incorporated by this reference.

C. Reports --

1. Each telecommunications corporation shall maintain records of its operations in sufficient detail to permit review of its service performance.

2. Central offices with more than 500 local access lines, shall each report as promptly as possible to the Commission and the local news media, including, but not limited to, radio, TV, and newspaper, when applicable, failure or damage to the equipment or facilities which disrupts the local or toll service of 25 percent or more of the local access lines in that central office for a time period in excess of two hours.

D. Uniform System of Accounts -- The Uniform System

of Accounts for Class A and Class B telephone utilities, as prescribed by the Federal Communications Commission at 47 CFR 32 is the prescribed system of accounts to record the results of Utah intrastate operations.

E. Data to be Filed with the Commission --

1. Terms and Conditions of Service -- Each telecommunications corporation shall have its tariff, price lists, etc., which describe the terms and conditions under which it offers public telecommunications services on file with the Commission, and where applicable, in accordance with the rules governing the filing of the information as prescribed by the Commission. It shall also provide the same information to the Commission in electronic format as requested by the Commission.

2. Exchange Maps -- Each telecommunications corporation shall have on file with the Commission an exchange area boundary map for each of its exchanges within the state. Each map shall clearly show the boundary lines of the exchange area wherein the telecommunications corporation serves. Exchange boundary lines shall be located by appropriate measurement to an identifiable location where that portion of the boundary line is not otherwise located on section lines, waterways, railroads, roads, etc. Maps shall show the location of major highways, section lines, geographic township and range lines and major landmarks located outside municipalities. An approximate distance scale shall be shown on each map.

R746-340-3. Engineering.

A. Utility Plant -- Utility plant shall be designed, constructed, maintained and operated in accordance with the provisions outlined in the National Electrical Safety Code, 1993 edition, incorporated by reference.

B. Party-line Service -- When party-line service is to be provided, no more than eight customers shall be connected on one local access line, unless approved by the Commission. The telecommunications corporation may re-group customers as may be necessary to carry out the provisions of this rule.

R746-340-4. Emergency Operation.

A. Emergency Service -- Telecommunications corporations shall make reasonable arrangements to meet emergencies resulting from failures of service, unusual and prolonged increases in traffic, illness of personnel, fire, storm or other acts of God, and inform its employees as to procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunication service.

B. Battery Power -- Each central office shall have a minimum of three hours battery reserve.

C. Auxiliary Power -- In central offices exceeding 5,000 lines, a permanent auxiliary power unit shall be installed.

R746-340-5. Maintenance.

A. Maintenance of Plant and Equipment --

1. Each telecommunications corporation shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system to permit the rendering of safe, adequate and continuous service at all times.

2. Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safety and the adequate service performance of the plant affected.

B. Customer Trouble Reports --

1. Each telecommunications corporation shall provide for the receipt of customer trouble reports at all hours, and shall make a full and prompt investigation of and response to each complaint. The telecommunications corporation shall maintain a record of trouble reports made by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the report, and the action taken to clear the trouble or satisfy the complaint.

2. Provision shall be made to clear emergency out-of-service trouble at all hours, consistent with the bona fide needs of customers and the personal safety of utility personnel.

3. Provisions shall be made to clear other out-of-service trouble not requiring unusual repair, within 48 hours of the report received by the telecommunications corporation, unless the customer agrees to another arrangement.

4. If unusual repairs are required, or other factors preclude clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

C. Inspections and Tests -- Each telecommunications corporation shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving efficient operation of its system and rendering safe, adequate, and continuous service. It shall file a description of its inspection and testing program with the Commission showing how it will monitor and report compliance with Commission rules or standards.

D. Planned Service Interruptions -- If service must be interrupted for purposes of rearranging facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each telecommunications corporation shall attempt to notify each affected customer in advance of the interruption. Emergency or alternative service shall be provided, during the period of the interruption, to assure communication is available for local law enforcement and public safety units and agencies.

R746-340-6. Safety.

A. Safety -- Each telecommunications corporation shall:

1. require its employees to use suitable tools and equipment to perform their work in a safe manner;

2. instruct employees in safe work practices;

3. exercise reasonable care in minimizing the hazards to which its employees, customers and the general public may be subjected.

R746-340-7. End User Service Standards For All Telecommunications Corporations.

A. Public Telecommunications Services -- A telecommunications corporation providing public telecommunications services shall, excluding documented Allowed Service Disruption events listed under R746-340-1(B)(1):

1. meet minimum voice grade requirements as defined in R746-340-1(B)(19);

2. meet network call completion standards:

a. provide dial tone within three seconds on at least 98 percent of tested calls placed during average daily busy hours each month for each wire center; and

b. assure that no interoffice facilities entirely within a telecommunications corporation's network, except choke network trunks, exceed two percent blocking. Intertandem facilities shall be governed by R746-365.

KEY: procedures, telecommunications, telephone utility regulations

May 27, 2014 54-4-1
Notice of Continuation June 24, 2013 54-4-14
54-4-23

R746. Public Service Commission, Administration.
R746-344. Filing Requirements for Telephone Corporations with Less Than 5,000 Access Line Subscribers.
R746-344-1. Purpose.

A. Standard filing requirements are to provide uniformity of information for general rate case filings. The required information shall be filed on schedules, approved by the Commission, with the application for a change in rates. Providing this information with the rate application shall simplify proceedings, eliminate expense, and enhance the effectiveness of the fact finding process.

B. The standard filing requirements will provide factual information in an organized and referenced manner. This information may be used by the Commission, the Division of Public Utilities, or other interested parties to the case.

R746-344-2. Applicability.

The completion of the schedules approved by the Commission shall fulfill the requirement to provide necessary information to support proposed rate changes for telephone utilities with less than 5,000 subscriber access lines as set forth in Sections 54-7-12(7). The completed approved schedules shall be received by the Commission at least 30 days in advance of the proposed effective date of the rate changes.

R746-344-3. Hearing Process.

A. The Commission may, upon its own motion or upon complaint, set the case for hearing. If the case is set for hearing, the applicant may resubmit the schedules contained in the filing requirements as its primary exhibits. The Commission may require written direct testimony.

R746-344-4. Selection of a Test Year.

The applicant must base its rate change application on twelve months of data called a test year. The proposed test year can be historical, forecasted, or a combination of historical and forecasted months, not to exceed twelve months of forecasted data from the date the application is first received by the Commission.

R746-344-5. Forecasted Data.

A. The applicant shall provide the Commission with one copy of assumptions and the supporting work papers used to develop forecasted data. The applicant may be required by the Commission to provide updated actual data as it becomes available or to recalculate the forecasted data using justifiable alternative assumptions. An applicant which utilizes forecasted data for the test year, shall use an average rate base and capital structure to calculate the revenue deficiency.

B. The applicant may limit the change to known and measurable changes from the Federal Communications Commission's or state policies, if the revenue change is only required because of changes in those policies.

R746-344-6. Toll Revenues.

The applicant shall provide the Commission with a copy of the work papers and methodology used to develop the toll revenues included in the case.

R746-344-7. Audited Financial Statements.

If the applicant is audited by an independent certified public accounting firm, the applicant shall provide the Commission with one copy of the most recent audited financial statements, management letters and opinions prepared by that firm.

R746-344-8. Assistance Service.

Approved schedules will be self-explanatory. The applicant may contact the Division of Public Utilities for assistance if it does not understand the rate-making process for the schedules. A letter requesting assistance should be sent to:

Manager, Telecommunications Section
Division of Public Utilities
160 East 300 South Street
P.O. Box 45802
Salt Lake City, Utah 84145

KEY: public utilities, telecommunications, rules and procedures
1988 54-7-12(5)(6)
Notice of Continuation July 31, 2013

R746. Public Service Commission, Administration.
R746-345. Pole Attachments.
R746-345-1. Authorization.

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and 54-3-1,54-4-1, and 54-4-13, the Public Service Commission shall have the power to regulate the rates, terms and conditions by which a public utility, as defined in 54-2-1 including telephone corporations as defined in 54-2-2, can permit attachments to its poles by an attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits pole attachments to utility's poles by an attaching entity.

1. Although specifically excluded from regulation by the Commission in 54-2-1, solely for the purpose of any pole attachment, these rules apply to any wireless provider.

2. Pursuant to these rules, a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology -- The rate methodology described in Section R746-345-5 shall be used to determine rates that a public utility may charge an attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company, communications company, or other entity that provides information or telecommunications services that attaches to a pole owned or controlled by a public utility.

B. "Attachment Space" -- The amount of usable space on a pole occupied by a pole attachment as provided for in Subsection R746-345-5(B)(3)(d).

C. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

D. "Make-Ready Work" -- The changes to be made to a pole owner's poles, its own pole attachments, the existing pole attachments of other attaching entities, or the existing additional equipment associated with such attachments, which changes may be needed to accommodate a proposed additional pole attachment. Such make-ready work is coordinated by the pole owner and is performed by the owners of the poles or owners of the pole attachments and additional equipment or as otherwise agreed to by these owners.

E. "Pole Attachment" -- All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule. Additional equipment that is placed within an attaching entity's existing attachment space, and equipment placed in the unuseable space which is used in conjunction with the attachments, is not an additional pole attachment for rental rate purposes. All equipment and devices shall meet applicable code and contractual requirements. Pole attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

F. "Pole Owner"-- A public utility having ownership or control of poles used, in whole or in part, for any electric or telecommunications services.

G. "Secondary Pole" -- A pole used solely to provide service wire drops, the aerial wires or cables connecting to a customer premise.

H. "Secondary Pole Attachment" -- A pole attachment to a secondary pole.

I. "Wireless Provider" -- A corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts -- A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms and conditions for any pole attachment, to the Commission for approval.

1. A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rates, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract, and SGAT shall also include:

a. a description of the permitting process, the inspection process, the joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;

b. emergency access provisions; and

c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract, or SGAT, or other Commission-approved contract.

1. Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

C. Make-Ready Work, Timeline and Cost Methodology -- As a part of the application process, the pole owner shall provide the applicant with an estimate of the cost of the make-ready work required and the expected time to complete the make-ready work as provided for in this sub-section. All applications by a potential attacher within a given calendar month shall be counted as a single application for the purposes of calculating the response time to complete the make-ready estimate for the pole owner. The due date for a response to all applications within the calendar month shall be calculated from the date of the last application during that month. As an alternative to all of the time periods allowed for construction below, a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay. Pole owners must provide this alternative estimate within the estimate timelines provided below. Applicants that wish to consider self-building shall inform the pole owner at the time of application that they are considering the self-build option, if available, and they would like a two-alternative make-ready bid. The pole owner and each existing attaching entity are responsible to determine what portion, if any, of the make-ready work their facilities require which may be performed through a self-build option and what conditions, if any, are associated with such self-build option. In the first alternative, the pole owner and attaching

entities would be responsible for all necessary make-ready work. For the second alternative, the pole owner and attaching entities will identify what make-ready work they will perform, if any, with an associated cost estimate, and also identify what make-ready work, if any, the owner is agreeable to have performed through a self-build option and the conditions, if any, for such self-build option.

1. For applications up to 20 poles, the pole owner shall respond with either an approval or a rejection within 45 days. At the same time as an approval is given, a completed make-ready estimate must be provided to the applicant explaining what make-ready work must be done, the cost of that work, and the time by which the work would be finished, that is no later than 120 days from receiving an initial deposit payment for the make-ready work.

2. For applications that represent greater than 20 poles, but equal to or less than .5% of the pole owner's poles in Utah, or 300 poles, whichever is lower, the time for the pole owner's approval and make-ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

3. For applications that represent greater than the number of poles calculated in section 3(2)(C)(2) above, but equal to or less than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the time for the approval and make-ready estimate shall be extended to 90 days, and the time for construction will be extended to 180 days.

4. For applications that represent greater than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make-ready estimate and make-ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make-ready estimate and construction period information should be delivered or to arbitrate the negotiations.

5. If the pole owner rejects any application, the pole owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole owner's stated reasons are sufficient grounds for rejection.

6. For all approved applications, the applicant will either accept or reject the make-ready estimate. If it accepts the make-ready estimate and make-ready construction time line, the work must be done on schedule and for the estimated make-ready amount, or less, and the applicant will be billed for actual charges up to the bid amount.

7. Applicants must pay 50% of the make-ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.

8. An applicant may, at its own discretion, exercise any of the self-build options given for the required make-ready work subject to the conditions made.

9. An applicant may reject a make-ready estimate if it wishes to contest, before the Commission, that the make-ready estimate or make-ready construction time line is not prepared in good-faith, or is unreasonable or not in the public interest.

D. Pole Attachment Placement -- All new copper cable attachments shall be placed at the lowest level permitted by applicable safety codes. In cases where an existing copper attachment has been placed in a location higher than the minimum height the safety codes require, the pole owner shall determine if the proposed attachment may be safely attached either above or below the existing copper attachment taking account of midspan clearances and potential crossovers. If these attachment locations, above or below the copper cable, comply with the applicable safety code, the attacher may attach to the pole without paying to move the copper cable. The owner of the copper cable may elect to pay the costs of having the cable moved to the lowest position as part of the attachment process, or it may elect to move the cable themselves prior to the attaching entity's attachment. If the copper cable must be moved in order for the attacher to be able to safely make its attachment, the attacher shall pay the costs associated with moving the existing copper cable.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed, after the effective date of this rule, immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling -- An attaching entity must label its pole attachments to indicate ownership. Pole attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed, after the effective date of this rule, immediately upon installation. Pole Attachments installed prior to the effective date of this rule shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

C. Exception -- Electrical power pole attachments do not need to be labeled.

R746-345-5. Rental Rate Formula and Method.

A. Rate Formula -- Any rate based on the rate formula in this Subsection shall be considered just and reasonable unless determined otherwise by the Commission. A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as an annual per attachment rental rate for each attachment space used by an attaching entity. The following formula and presumptions shall be used to establish pole attachment rates:

1. Formula:

Rate per attachment space = (Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate)

2. Definitions:

a. "Carrying Charge Rate" means the percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, pro-rated annualized costs for pole audits or other expenses that are attributable to the pole owner's investment and management of poles.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." "Gross cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. "Net cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount. A pole owner may use gross cost only when its net cost is a negative balance. If using the net or gross cost results in an unfair or unreasonable outcome, a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.

3. Rebuttable presumptions:

a. Average pole height equals 37.5 feet.

b. Usable space per pole equals 13.5 feet.

c. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

(i) An electric pole attachment equals 7.5 feet;

(ii) A telecommunications pole attachment equals 1.0 foot;

(iii) A cable television pole attachment equals 1.0 foot; and

(iv) An electric, cable, or telecommunications secondary pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined by the amount of space on the pole that is rendered unusable for other uses, as a result of the attachment or the associated equipment. The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract, or SGAT, pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

(i) may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole;

(ii) may not exceed the average pole height established in Subsection R746-345-5(A)(3)(a).

(iii) In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider as determined in Subsection R746-345-5(A)(3)(d)(v), the pole owner or wireless provider may petition the Commission to determine the footage of space used by the wireless provider as provided in Subsection R746-345-3(C).

f. The Commission shall recalculate the rental rate only when it deems necessary. Pole owners or attaching entities may petition the Commission to reexamine the rental rate.

4. A pole owner may not assess a fee or charge in addition to an annual pole attachment rental rate, including any non-recurring fee or charge described in Subsection R746-345-3(A)(2), for any cost included in the calculation of its annual pole attachment rental rate.

B. Commission Relief -- A pole owner or attaching entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Mediation -- Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a hearing.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

3. A party need not pay the portion of a bill that is disputed if it has started a dispute proceeding within 60 days of the due date of the disputed amount. The party shall notify the Commission if the dispute process is not before the Commission.

B. Settlement -- If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law and this rule, R746-345, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement 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.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation
August 29, 2006 54-4-13
Notice of Continuation July 31, 2013

R746. Public Service Commission, Administration.
R746-349. Competitive Entry and Reporting Requirements.
R746-349-1. Applicability.

These rules shall be applicable to each telecommunications corporation applying to be a provider of local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

R746-349-2. Definitions.

As used in this rule:

A. "CLEC" means a public telecommunications service provider that did not hold a certificate to provide public telecommunications service as of May 1, 1995.

B. "Division" means the Division of Public Utilities.

C. "GAAP" means generally accepted accounting principles.

D. "ILEC" means a telephone corporation which held a certificate to provide public teleocmmunications service as of May 1, 1995.

R746-349-3. Filing Requirements.

A. In addition to any other requirements of the Commission or of Title 63G, Chapter 4 and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;

2. proof of a bond in the amount of $100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation or liabilities to the Utah Public Telecommunications Service Support Fund, 54-8b-15, or the Hearing and Speech Impaired Fund, 54-8b-10. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer and state fund liabilities;

3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;

4. a statement regarding the services to be offered including:

a. which classes of customer the applicant intends to serve,

b. the locations where the applicant intends to provide service,

c. the types of services to be offered;

5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;

6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

7. summaries of the professional experience and education of all managerial personnel who will have responsibilities for the applicant's proposed Utah operations;

8. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;

9. a chart of accounts that includes account numbers, names and brief descriptions;

10. financial statements that at a minimum include:

a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,

b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,

c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,

d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;

11. financial statements to demonstrate sufficient financial ability on the part of the applicant. At a minimum, the applicant's statements must show:

a. positive net worth for the applicant CLEC,

b. sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,

c. proof of bond as specified in R746-349-3(A)(2);

12. a five-year projection of expected operations including the following:

a. proforma income statements and proforma cash flow statements,

b. when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,

c. when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

13. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

14. evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

a. proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,

b. or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;

15. a statement as to why entry by the applicant is in the public interest;

16. proof of authority to conduct business in Utah;

17. a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following:

a. sanctions imposed against the applicant for any of these activities,

b. copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other documents from any non-government entities or persons,

c. the applicant's responses to any of these issues;

18. statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant's to prevent unauthorized switching of Utah local service by the applicant, its employees or its agents.

B. Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with R746-1-501, Discovery.

R746-349-4. Reporting Requirements.

A. When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

B. Each certificated telecommunications corporation shall file an updated chart of accounts by March 31, of each year.

C. Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include all areas where the corporation is providing or offering to provide service in Utah. These maps will, at a minimum, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

D. Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within 10 days after changes to the service territory occur. The map shall be made available for public inspection.

E. At least five days before offering any telecommunications service through pricing flexibility, a telecommunications corporation shall file with the Commission its proposed price list or if ordered by the Commission, the prices, terms, and conditions of a competitive contract. Each filing may be made electronically and shall:

1. describe the public telecommunications services being offered;

2. set forth the terms and conditions upon which the public telecommunications service is being offered;

3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and

4. be made available to the public through the Division.

F. The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and obtains an extension from the Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

1. annual revenues from operations attributable to Utah by major service categories. That information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

a. private line and special access,

b. business local exchange,

c. residential local exchange,

d. measured interexchange,

e. vertical services,

f. business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible;

2. annual expenses and estimated taxes attributed to operations in Utah;

3. year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah. The actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

4. financial statements prepared in accordance with GAAP. These financial statements shall, at a minimum, include an income statement, balance sheet and statement of cash flows and include a letter from management attesting to their accuracy, integrity and objectivity and that the statements follow GAAP;

5. list of services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served;

6. number of access lines in service by geographic area, segregated between business and residential customers;

7. number of messages and minutes of services for measured services billed to end users;

8. list of officers and responsible contact personnel updated annually;

9. a report of gross revenue on a form supplied by the Division. This report shall be used in calculating the Public Utility Regulation Fee owed by the CLEC.

G. The annual report and the report of gross revenue filed by a CLEC may be considered protected documents under the Government Records Access Management Act, if the CLEC complies with the requirements of that act.

R746-349-5. Change of Service Provider.

A. All requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR 64.1100 and 1150, 1996, incorporated by this reference.

B. A telecommunications provider will be held liable for both the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer to the providers's own service. Telecommunications providers are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A carrier that engages in the unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original provider or the unauthorized provider. Violators may be punished pursuant to 54-7-25 through 54-7-28. The telecommunications provider responsible for the unauthorized transfer shall reimburse the customer or the original carrier for reestablishing service to the customer at the applicable tariff, price list or contract rate of the original carrier.

R746-349-6. CLEC and ILEC Subject to Pricing Flexibility Exemptions.

A. Unless otherwise ordered by the Commission either in the CLEC's certificate proceeding or in a proceeding instituted by an ILEC, the Commission or other party, a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3 is exempt from the following statues and rules. All other rules of the Commission and all other duties of public utilities not specifically exempted by these rules or by a Commission order apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3. All powers of the Commission not specifically altered by these rules apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3.

1. Exemptions from Title 54:

54-3-8, 54-3-19 -- Prohibitions of discrimination

54-7-12 -- Rate increases or decreases

54-4-21 -- Establishment of property values

54-4-24 -- Depreciation rates

54-4-26 -- Approval of expenditures

2. Exemptions from Commission rules:

R746-340-2 (D) -- Uniform System of Accounts (47 CFR 32)

R746-340-2 (E) (1) -- Tariff filings required

R746-340-2 (E) (2) -- Exchange Maps

R746-341 -- Lifeline (CLEC with ETC status)

R746-344 -- Rate case filing requirements

R746-401 -- Reporting of construction, acquisition and disposition of assets

R746-405 -- Tariff formats

R746-600 -- Accounting for post-retirement benefits

3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service. The ILEC will not be exempted from the R746-341. Lifeline Rule.

R746-349-7. Informal Adjudication of Certain CLEC Merger and Acquisition Transactions.

A. A CLEC may obtain approval of a transaction subject to 54-4-28 (merger, consolidation or combination), 54-4-29 (acquiring voting stock or securities), and 54-4-30 (acquiring properties) in the following manner. Such adjudicative proceedings are designated as informal adjudicative proceedings pursuant to 63G-4-203 unless converted to formal adjudicative proceedings.

1. The CLEC shall submit an application which includes, but is not limited to:

a. identification that it is not an ILEC,

b. identification that it seeks approval of the application pursuant to this rule,

c. a reasonably detailed description of the transaction for which approval is sought,

d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and

e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.

2. Upon receipt of the CLEC's application, the Commission will issue a public notice stating that the application has been filed, that any interested party may submit comments on the application within 14 days following public notice and may submit reply comments within 21 days following public notice, and provide notice of the date and time for a hearing on the application, which shall be scheduled to occur within 30 days following the issuance of the public notice.

3. If no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.

4. The Commission may convert the proceeding on an application into a formal adjudicative proceeding based upon an objection made in comments or reply comments, evidence submitted, other reasonable basis, which may include failure of the transaction to qualify for streamlined treatment from a federal agency, or its own motion and may continue the hearing on the application as needed.

R746-349-8. CLEC's Obligations with Respect to Provision of Services.

A. The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

1. the CLEC's obligation to furnish service to customers is dependent on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;

2. the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;

3. the CLEC will furnish service if it is able to obtain, retain and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;

4. at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service. Those charges will be in addition to the normal rates and charges applicable to the service being provided;

5. when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges;

6. all construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

R746-349-9. Pricing Flexibility Revocation, Conditions, or Restrictions.

A. The Commission may initiate or any interested person may request agency action for the Commission to initiate, a proceeding to revoke or impose conditions or restrictions on a telecommunications corporation's pricing flexibility as authorized by 54-8b-2.3(8).

1. A request to initiate any proceeding pursuant to this rule shall:

a. Identify the telecommunications corporation or corporations and the public telecommunications service or services whose pricing flexibility the requesting party believes may be subject to revocation or imposition of conditions or restrictions;

b. The basis for the belief; and

c. The relief sought.

2. A request to initiate a proceeding shall be served upon the telecommunications corporation or corporations the requesting party has identified in the request, the Division and the Committee.

3. The telecommunications corporation or corporations against whom the request is directed and any other interested party may respond to the request in accordance with the Commission's procedural rules and standard practices.

4. If a proceeding is initiated, an interested party may request to review confidential information retained by the Commission or the Division that is reasonably related to any potential grounds for revocation, conditioning or restriction under section 54-8b-2.3(8). The party shall certify that it seeks to review that confidential information solely for purposes of determining whether a sufficient factual basis exists to and that the confidential information will not be used for any other purpose or disclosed to any persons who may be able to use the confidential information in business decisions to any party's competitive advantage. Prior to disclosing any confidential information, the Commission or the Division:

a. Shall require the requesting party to execute an appropriate nondisclosure agreement;

b. Shall notify any telecommunications corporation whose company-specific information would be disclosed of the request at least 14 calendar days before the planned date for disclosing such information; and

c. Shall not disclose the company-specific information of any telecommunications corporation that objects to disclosure of its confidential information, if such telecommunications corporation files with the Commission or Division and serves upon other parties an objection to the disclosure of such confidential information within 10 calendar days after receiving the notice required by 349-9.4.b. The Commission shall conduct a hearing at which the telecommunications corporation whose confidential information may be disclosed is given the opportunity to present its objections or request terms and conditions for disclosure and during which other parties may respond to the telecommunications corporation whose confidential information is sought to be disclosed.

5. In any proceeding conducted, the Commission will enter an appropriate protective order to ensure protection for

confidential, proprietary, and competitively sensitive information that has been or is provided to the Commission, the Division, the Committee, or another party to the proceeding.

6. Nothing in this rule limits the ability of any party or the Commission to raise or address any issue in any other proceeding or as permitted by law.

KEY: essential facilities, imputation, public utilities, telecommunications

August 25, 2008 54-7-25 through 28

Notice of Continuation January 31, 2017 54-8b-2

54-8b-3.3

63G-4

R746. Public Service Commission, Administration.
R746-365. Intercarrier Service Quality.
R746-365-1. General Provisions.

A. Application and Authority -- This rule shall apply to telecommunications corporations that are obligated to interconnect facilities and equipment for the mutual exchange of telecommunications traffic pursuant to 54-8b-2.2.

1. This rule provides service guidelines to ensure that telecommunications corporations, individually and jointly, will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support systems and joint network planning processes that will:

a. prevent impairment of public telecommunication services attributable to the provisioning of essential facilities and services used to provide local exchange service, including unreasonable blocking of telecommunications traffic carried by or exchanged between the networks of multiple telecommunications corporations;

b. ensure that each incumbent local exchange carrier timely provides essential interconnection facilities and services to other telecommunications corporations that is at least equal in quality to that provided by the incumbent local exchange carrier to itself or to any of its subsidiaries or affiliates, or to any other carrier with whom the incumbent local exchange carrier interconnects, or provides interconnection facilities and services or that otherwise is adequate, efficient, just and reasonable.

2. This rule defines guidelines relating to interconnection and the exchange of traffic that apply to all telecommunications carriers and further defines additional guidelines relating to interconnection and the exchange of traffic that apply only to incumbent local exchange carriers, as required by the federal Telecommunications Act of 1996, 47 U.S.C. Section 251.

3. This rule specifies network performance and service quality guidelines applicable to telecommunications corporations interconnecting pursuant to 54-8b-2.2 and upon which the Commission may rely in determining whether service is just, adequate, and reasonable.

4. This rule establishes specific network monitoring and reporting obligations for incumbent local exchange carriers.

5. Incumbent local exchange carriers with less than 50,000 access lines shall be exempt from this rule. If a carrier receives a bona fide request for interconnection made pursuant to the notice and exemption provisions of 47 U.S.C. Section 251 (f), in the event the Commission determines that the requirements of Section 251(f)(1)(B) are met and the Commission terminates the exemption, the Commission may also consider what service standards shall apply to the incumbent local exchange carrier and may promulgate rules to implement applicable standards.

6. The adoption of this rule by the Commission neither precludes subsequent amendment pursuant to applicable statutory procedures, nor the grant of a temporary exemption by the Commission as provided in R746-1-109, Deviation from Rules.

R746-365-2. Definitions.

A. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined in 54-8b-2, R746-348, or this rule. As used in this rule, unless context states otherwise, the following definitions shall apply:

1. "Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this subsection, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.

2. "Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.

3. "Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.

4. "Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.

5. "CFR" -- means the Code of Federal Regulations.

6. "Commission" -- means the Public Service Commission of Utah.

7. "Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.

8. "Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.

9. "End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.

10. "FCC" -- means the Federal Communications Commission.

11. "Federal Act" -- means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. Section 151 et seq.).

12. "Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

13. "Incumbent Local Exchange Carrier" (ILEC) -- is defined as it is in R746-348, Interconnection.

14. "Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

15. "Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

16. "Network Element" or "Network Facility" -- is defined as it is in R746-348-2. Interconnection.

17. "Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

18. "OSS Interface" -- means a system of communications links, computer hardware and software and associated equipment providing access into an ILEC's operational support systems for human-to-computer or computer-to-computer communication. This definition is conjunctive to the definition of "operational support" contained in R746-348-2, Interconnection.

19. "Service Order" -- means a written or electronic request for essential facilities or services made to effectuate 54-8b-2.2 and section 251 of the federal act.

20. "Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications corporations to monitor repair and

maintenance actions required for disposition of out-of-service or substandard service conditions.

21. "Wholesale Services" -- means essential services available to telecommunications corporations for the purpose of resale to end users.

22. "Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

R746-365-3. Network Guidelines Applicable to All Telecommunications Corporations.

A. Engineering -- All telecommunications corporations shall construct network facilities in conformance with network design standards and specifications.

B. Stricter Standards -- If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the agreements may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

R746-365-4. Service Quality Guidelines.

A. Service Quality Applicable to All Telecommunications Corporations --

1. Carrier Provisioning Intervals -- Each telecommunications corporation shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from a telecommunications corporation's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through, as further enumerated in R746-365-5. A telecommunications corporation shall return a FOC within two business days of receipt of a service order from another telecommunications corporation.

a. Interoffice Trunking Facilities -- Pursuant to forecasting requirements established in R746-365-6, forecasted trunk, routing and switching facilities shall be provisioned to any requesting local exchange carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

(i) Service Orders Presented Under Approved Forecasts -- A telecommunications corporation shall complete all service orders for essential facilities and services requested by another telecommunications corporation that comport with four-month projections contained in a joint forecast developed pursuant to R746-365-6(C).

b. Number Portability -- Telecommunications corporations shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.

2. Trouble Reports --

a. Receipt, Investigation and Recording -- Each telecommunications corporation shall provide for the receipt of trouble reports 24 hours a day, seven days a week. Each telecommunications corporation providing public telecommunications service shall investigate and respond to each trouble report. Each telecommunications corporation shall maintain a record of trouble reports made by end users and other telecommunications corporations which complies with R746-365-5(B)(4).

b. Emergency Out-of-Service -- Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of a telecommunication corporations personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.

c. Notice of Unusual Repairs and Planned Interruptions -- If unusual repairs preclude prompt disposition of a reported trouble, telecommunications corporations shall notify all affected telecommunications corporations. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications corporations shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

d. Repair Intervals -- Each telecommunications corporation shall seek to clear out-of-service trouble reports received from another telecommunications corporation within the following intervals, unless other repair intervals have been agreed to:

TABLE

DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications corporations is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure recorded in accordance with R365-5(B)(4).

3. Network Performance Levels -- Each telecommunications corporation shall engineer, furnish and install essential facilities and services designed to meet busy hour demand, and to prevent unreasonable blocking. The following minimum network performance standards apply to:

a. Interoffice Facilities --

(i) Local and extended area service interoffice trunk facilities shall have a minimum engineering design standard of (P.01) grade of service.

(ii) Intertandem facilities shall have a minimum engineering design standard of B.0025 (P.0025) grade of service.

b. Outside Plant -- Each telecommunications corporation shall engineer, construct and maintain cable and wire between an end user network interface device and the serving wire center in conformance with current industry standards, as described in R746-365-3(B), and common engineering practices.

B. Service Quality and Other Network Guidelines Applicable to ILECs --

1. Operational Support Systems --

a. OSS Interfaces -- Each ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support systems the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

b. Testing of OSS Interfaces -- Each telecommunications corporation shall upon request jointly conduct with one or more telecommunications corporations testing of OSS interfaces used to obtain access to operational support systems. OSS Interface testing shall commence not more than 45 days after a request for testing is received by a telecommunications corporation. The telecommunications corporations shall determine the duration

of tests which shall be conducted among noncommercial end user accounts. No unreasonable limitation shall be imposed by an ILEC on another telecommunications corporation's ability to test intercarrier OSS Interfaces to ensure compatibility between ILEC and the other telecommunications corporation's operational support systems.

2. Network Provisioning Intervals -- Each ILEC shall provide essential facilities and services that comply with the following installation intervals:

a. Network Elements -- Each ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services as described in R746-365-5-(C)(3)(c).

(i) Unbundled Loops -- Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications corporations within the specified intervals.

TABLE

Facility Type	Quantity	Interval
DSO or analog equivalent, dispatch, facilities available:	1 - 24	5 days
	24 - n	negotiated
DSO or voice grade equivalent, no dispatch:	1 - 24	3 days
	24 - n	7-10 days
DS1 -- Facilities provisioned and available:		5 days
ISDN -- Facilities provisioned and available:		7 days
XDSL -- Facilities provisioned and available:		7 days
DS3 -- Facilities provisioned and available:		7 days
OC3 -- Facilities provisioned and available:		15 days
OC4 - Higher -- Facilities provisioned and available:		15 days or negotiated due date.

b. Wholesale Services -- Installation intervals for wholesale services shall vary depending upon whether an existing end user service provided by an ILEC is transferred to another telecommunications corporation, or, is a new service installation.

(i) An ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the telecommunications corporation.

(ii) An ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the telecommunications corporation.

(iii) An ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the telecommunications corporation.

c. Collocation -- The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

(i) Upon receipt by an ILEC of a request for collocation, the ILEC shall within 15 days notify the telecommunications corporation whether sufficient space exists. If the telecommunications corporation disputes an ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the telecommunications corporation may petition the Commission pursuant to Section 54-8b-17 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

(ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all non-recurring charges for construction of the telecommunications corporation's requested collocation arrangement.

(iii) The telecommunications corporation shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.

(iv) If the telecommunication corporation accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the telecommunication corporation's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the CLEC's collocated interconnection facilities. The ILEC shall grant the telecommunications corporation access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the telecommunication corporation's collocation equipment complete provisioning of all network facilities ordered by the telecommunications corporation.

(v) If the telecommunication corporation provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation. If the telecommunication corporation accepts the ILEC's amended quotation, construction of the collocation space shall proceed as described in R746-365-4(B)(3)(c)(iv); or, 3) reject the proposal. If the ILEC refuses to accept an independent contractor quotation or amend its own quotation, the telecommunications corporation may petition the Commission for an expedited hearing and resolution of the dispute pursuant to R746-365-8(B).

R746-365-5. Monitoring and Reporting Requirements.

A. Availability and Retention of Records --

1. Availability of Records -- Each telecommunications corporation shall make network engineering and administrative records available for inspection by the Commission or its designee during normal operating hours.

2. Retention of Records -- All information required by this rule shall be preserved for at least 36 months after the date of entry.

3. Information Maintained -- Each telecommunications corporation shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other telecommunications corporations.

4. Rights of Division of Public Utilities -- Upon request made by the Division of Public Utilities, a telecommunications corporation shall provide within seven business days copies of any information requested. The Division of Public Utilities may request frequent monitoring of network performance, provisioning intervals and general service quality if evidence exists that public telecommunications services are impaired.

5. Special Study -- When requested by the Division of Public Utilities (the Division), an ILEC may file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair

intervals for services provided to a telecommunications corporation, to an affiliate, or, aggregated for its ten largest customers. The Division shall investigate the source of the ILEC's operational support evidence and, at its discretion, petition the Commission pursuant to R746-1-109, Deviation from Rules. If the Commission grants consideration of a petition, intervenors may audit the ILEC's operational support evidence underlying the results of its study.

B. Network Monitoring and Performance Reporting Obligations Applicable to All Telecommunications Corporations --

1. Monitoring -- Each telecommunications corporation shall monitor the use of its network so as to:

a. issue the reports required by this section; and

b. monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.

2. Call Blocking -- Each telecommunications corporation shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications corporation. Each telecommunications corporation shall notify an interconnecting telecommunications corporation immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels specified in R746-365-4(A)(2).

3. Delayed Service Orders -- Each telecommunications corporation shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications corporation in accordance with the provisioning intervals established in R746-365-4. The record shall provide the following data:

a. the name and address of the telecommunications corporation;

b. the circuit or facility type requested in the service order;

c. the date and hour the service order was received;

d. the reason for the delay;

e. the number of days the order has been delayed;

f. the expected order completion date for each service order;

g. whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;

h. a copy of the FOC provided the requesting telecommunications corporations.

4. Carrier Trouble Reports -- Each telecommunications corporations shall maintain a record, by wire center, of trouble reports received from another telecommunications corporations. The record shall:

a. identify the telecommunications corporation experiencing trouble;

b. the affected services;

c. the time, date and nature of the report;

d. the cause and action taken to clear the trouble and its recorded disposition;

e. the date and time of trouble clearance.

C. Performance Monitoring and Reporting Obligations Applicable to ILECs --

1. Service Provisioning Reports -- Each ILEC will provide interconnecting telecommunications corporations performance monitoring reports detailing the ILEC's provisioning of:

a. services to the ILEC's retail customers in the aggregate;

b. essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;

c. essential facilities and services provided in the aggregate to other telecommunications corporations purchasing interconnection; and

d. essential facilities and services provided to individual telecommunications corporations purchasing interconnection.

2. Service Response Description -- The ILEC shall develop a detailed narrative description of the procedures it employs in responding to calls from:

a. its retail customers;

b. its affiliated customers purchasing essential facilities and services for interconnection or local exchange access;

c. interconnecting telecommunications corporations; and

d. The service response description will be made available upon request to telecommunications corporations purchasing essential facilities and services for interconnection. The ILEC shall comply with the procedures outlined in its service response description.

3. Performance Monitoring Reports -- Performance monitoring reports shall include the following reports in addition to any additional reports the Commission may request:

a. Pre-Ordering Data -- Pre-ordering data means network administration data that resides in an ILECs operational support systems that includes, but is not limited to: facility availability, service availability, customer service records, appointment scheduling, telephone number reservation, feature function availability, and street address validation.

(i) Average OSS Response Interval for Pre-Ordering Data -- This report measures average response time per transaction for: customer service records; due date availability, address validation, feature function availability and telephone number selection and reservation. It shall be measured as: the Average Response Interval. The Average Response Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences between minuends expressed in Query Response date and time and subtrahends expressed in Query Submission date and time, the sum total dividend being divided by a divisor expressed as the number of Queries submitted in the reporting period.

(ii) OSS Interface Availability -- This report measures the percentage of time an OSS Interface is actually available for use compared to scheduled availability. It shall be measured as: the Percent System Availability. The Percent System Availability will equal the quotient of the following formula: the dividend expressed in the hours the OSS Interface functionality is actually available to CLECs during the report period divided by a divisor expressed in the number of hours the functionality was scheduled to be available during the reporting period, the quotient being expressed as a percentage.

b. Ordering --

(i) Firm Order Confirmation Timeline -- This report measures the average interval from receipt of a service order to distribution of an order confirmation notice. It shall be measured as: measured as the Mean FOC Interval. The Mean FOC Interval will equal the quotient of the following formula: the dividend expressed as the sum total of the differences of minuends expressed as the date and time of Firm Order Confirmation (FOCs) and subtrahends expressed as the date and time of Order acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders confirmed in the reporting period.

(ii) Reject Timelines -- This report measures average response time from receipt of service order to distribution of rejection notice. It shall be measured as: the Mean Reject Interval. The Mean Reject Interval will equal the quotient of the following formula: a dividend expressed as the total sum of the difference of minuends expressed as the date and time of Order Rejection and subtrahends expressed as the date and time of Order Acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders Rejected in the reporting period.

(iii) Percentage Rejects -- This report measures the percentage of total service orders received and rejected by the

ILEC due to errors or omissions in the service order.

(iv) Timeliness of Order Completion Notification -- This report measures average response time from the actual completion date to distribution of service order completion notification. It shall be measured as: the Completion Interval. The Completion Interval shall equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Notice of Completion issued to the telecommunications corporations and subtrahends expressed as the date and time of Work Completion by the ILEC, the sum total dividend being divided by a divisor expressed as the number of Orders completed during the reporting period.

(v) Delayed Order Interval -- This report measures uncompleted orders where the committed due date on a firm confirmation order has passed. It shall be measured as: the Mean Delayed Order Interval. The Mean Delayed Order Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the reporting period close date and subtrahends expressed as the Committed Order Due date, the sum total dividend being divided by a divisor expressed as the number of Orders Pending and Past the Committed Due Date.

c. Provisioning --

(i) Average Completion Interval -- This report measures the average time from an ILECs receipt of service order to the completion date provided on an OCN. It shall be measured as: the Average Completion Interval. The Average Completion Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the OCN date and time and subtrahends expressed as the Service Orders Submission date and time, the sum total dividend being divided by a divisor expressed as the count of Orders completed in the reporting period.

(ii) Percentage of Orders Completed On Time -- This report measures the percentage of total orders completed on or before the completion date provided on an OCN. It shall be measured as: the Percent Orders Completed on Time. The Percent Orders Completed on Time will equal the quotient of the following formula: a dividend expressed as the count of Orders Completed within ILEC Committed Due Date and a divisor expressed as the count of Orders Completed in the reporting period, the quotient being expressed as a percentage.

(iii) Percentage Missed Installation Appointments -- This report measures the percentage of service orders where installation of service is not performed at a time in which the customer concurs. It excludes misses when the other telecommunications corporation or end user causes the missed appointment. It shall be measured as: the Percentage Missed Installation Appointments. The Percentage Missed Installation Appointments will equal the quotient of the following formula: a dividend expressed as the count of appointments missed and a divisor expressed as the count of Wholesale Orders completed in the reporting period, the quotient being expressed as a percentage.

(iv) New Service Installation Trouble Within 30 Days -- This report measures the percentage of new service installations which prove defective within 30 days following completion of a service order. It shall be measured as: the Percentage New Service Installation Trouble within 30 days. The Percentage New service Installation Trouble within 30 days will equal the quotient of the following formula: a dividend expressed as the count of defective New Service Install in the past 30 days divided by a divisor expressed as the count of total New Service Installs in the past 30 days; the quotient being expressed as a percentage.

d. Maintenance --

(i) Trouble Report Rate -- This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. It shall be measured as: the Trouble Report Rate. The Trouble Report Rate will equal the quotient of the following formula: a dividend expressed as the count of Initial and Repeated Trouble Reports in the reporting period divided by a dividend expressed as the number of Service Access Lines in service at the end of the reporting period; the quotient being expressed as a percentage. For purposes of R746-365-5C(1)(c) and (d), an ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications corporation's end-user customers who are not served by the ILEC.

(ii) Missed Repair Appointments -- This report measures the percentage of trouble reports not cleared by the committed date and time. It excludes misses where the telecommunications corporation or end user caused the missed appointment. It shall be measured as: the Percentage Missed Repair Appointments. The Percentage Missed Repair Appointments will equal the quotient of the following formula: a dividend expressed as the count of Repair Appointments Missed divided by a divisor expressed as the count of Total Appointments; the quotient being expressed as a percentage.

(iii) Mean Time to Restore -- This report measures the restoral interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared. It shall be measured as: the Mean Time to Restore. The Mean Time to Restore will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Ticket Closure and subtrahends expressed as the date and time of Ticket creation, the sum total dividend being divided by a divisor expressed as the count of Trouble Tickets Closed in the reporting period.

(iv) Percentage Repeat Trouble Reports Within 30 Days -- This report measures the percentage of trouble reports on a line or circuit that has had a previous trouble report in the preceding 30 days. It shall be measured as: the Repeat Trouble Rate. The Repeat Trouble Rate will equal the quotient of the following formula: a dividend expressed as the count of Service Access Lines generating more than one Trouble Report within a continuous 30 day period divided by a divisor expressed as the number of Trouble Reports in the report period; the quotient being expressed as a percentage.

e. Billing --

(i) Timeliness of Daily Usage Feed -- This report measures the interval in hours between the recording of usage data and the transmission in proper format to a telecommunications corporation. It shall include usage originating at ILEC switches, resale and UNE switching, and not alternately billed messages received from other ILECs. It shall be measured as: the Mean Time to Provide Recorded Usage Records. The Mean Time to Provide Recorded Usage Records will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the data set transmission time and subtrahends expressed as the time of message recording the sum total dividend being divided by a divisor expressed as the count of all messages transmitted in the reporting period; the quotient being expressed as a percentage.

f. Specific Performance Monitoring Reports -- The Commission, the Division of Public Utilities or a telecommunications corporation may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring reports.

4. Identifiable Carrier-Specific Information -- An ILEC shall ensure that any carrier specific information contained in the performance monitoring reports is disclosed only to the individual carrier. The ILEC shall not use any information

specific to a carrier for any purpose other than the reporting requirements contained herein.

R746-365-6. Joint Planning and Forecasting.

A. Planning --A telecommunications corporation will meet with another telecommunications corporation, interconnecting or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications corporations. At a minimum, the telecommunications corporations will meet once every calendar quarter.

B. Forecasting --

1. Forecasting is the joint responsibility of the telecommunications corporations. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications corporations is required on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals:

a. four months;

b. one year; and

c. three years.

To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.

2. The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.

3. The use of Common Language Location Identifier (CLLI-MSG) shall be incorporated into the forecasts.

4. The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.

5. The forecasts, in narrative form, shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of the standards set forth in R746-365-5(B)(2).

6. The forecasts shall include the requirements of the telecommunications corporations for each of the following trunk groups:

a. intraLATA toll and switched access trunks;

b. EAS and local trunks;

c. directory assistance trunks;

d. 911 and E911 trunks;

e. operator service trunks;

f. commercial mobile radio service and wireless traffic; and

g. meet point billing trunks.

7. Unless otherwise agreed, forecasting information exchanged between interconnecting local exchange carriers, or disclosed by one interconnecting local exchange carrier to the other, shall be deemed confidential and proprietary.

C. Procedure for Forecasting --

1. At least 14 days before a scheduled joint planning and forecasting meeting, the telecommunications corporations shall exchange information necessary to prepare the forecast described in R746-365-6(B). At a minimum, the telecommunications corporation will provide the other with the following information.

a. Existing Interconnection Locations -- For existing interconnection locations between the telecommunications corporations, each telecommunications corporation shall provide:

(i) blocking reports, at the individual trunk group level, detailing blocking at each end office, including overflow volumes, and blocking between the telecommunications corporation's end offices and tandem switches;

(ii) the existence of any network switching, capacity or other constraints.

(iii) any network reconfiguration plans for the telecommunications corporation's network.

b. New Markets -- They may request the following information concerning a specific market area in the other's Utah service territory into which they desire to expand their own network:

(i) The network design and office types in the market area.

(ii) The capabilities of the network in the market area.

(iii) Any plans to reconfigure the network in the market area.

c. Future need information -- The telecommunications corporation will provide the other with the following information:

(i) The number of trunk lines requested and the projected century call second loads used to formulate such request.

(ii) Whether internet providers will be served and the projected number of internet provider lines needed.

(iii) The projected busy hour(s) of the trunk groups.

(iv) The expected century call seconds on busy hours - how many century call seconds the last idle trunk line will carry.

(v) The projected service dates for the requested trunking groups for the first quarter forecasted.

(vi) The telecommunications corporation's forecast for direct trunk groups to any particular end office.

(viii) Any ramp up time anticipated for the use of the requested trunk lines, and an estimate of when the trunk group will reach capacity limits.

(x) Whether the telecommunications corporation requests usage and overflow data on the trunk groups which are directly connected to the other's end offices.

2. The telecommunications corporation shall prepare a joint forecast consistent with the requirements of R746-365-6(B) and shall submit the forecast to the other at least seven days before the scheduled joint planning meeting.

3. Prior to the scheduled joint planning meeting, the telecommunications corporation shall notify the other whether it accepts the four-month forecast, rejects the four-month forecast, or proposes specific modifications to the four-month forecast.

a. If the telecommunications corporation rejects the four -month forecast or proposes modifications to the forecast, the telecommunications corporation shall submit a written statement to the other outlining the reasons why the forecast, as prepared by the other, is unacceptable. The statement shall be supported by written documentation to support the telecommunications corporation's position.

b. At the joint planning meeting, the telecommunications corporations may agree on the terms of the four-month forecast, as initially presented, or with modifications agreed to by them. If no agreement is reached, the telecommunications corporations shall jointly outline all areas of disagreement.

4. If the telecommunications corporations cannot agree on the terms of the quarterly four-month forecast, either local exchange carrier may commence an expedited dispute resolution proceeding before the Commission, as provided in Section 54-8b-17. In that proceeding, the burden of persuasion shall be on an ILEC to demonstrate that a four-month quarterly forecast submitted by a CLEC is unreasonable.

5. To the extent the telecommunications corporations agree to the terms of a forecast, the terms shall be deemed approved for purposes of this section, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.

6. If the telecommunications corporations agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, a telecommunications corporation shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast. Compliance with the terms of the forecast shall be based on the network provisioning interval standards set forth in R746-365-4(B)(2) as applicable.

D. Capacity Beyond the Four-month Forecast -- If a telecommunications corporation desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, the telecommunications corporation may order the additional quantity if it pays a capacity reservation charge to the other telecommunications corporation from whom it orders.

E. Trunk Group Underutilization -- If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either telecommunications corporation may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases the network performance levels and the network provisioning intervals as set forth in R746-365-4(A)(2) and R746-365-4(B)(3) shall be maintained. If the telecommunications corporations cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding as provided in Section 54-8b-17.

F. Point of Contact -- Telecommunications corporations shall provide a specified point of contact for planning, forecasting and trunk servicing purposes. The specified point of contact shall have all authority necessary to fulfill the responsibilities as set forth in this section.

R746-365-7. Remedies.

A. Commission Assessed Penalties -- The Commission may assess penalties, as provided in 54-7-25 and 54-8b-17, against any telecommunications corporation that unreasonably fails or refuses to comply with this rule, including, without limitation, the provisioning and forecasting provisions contained in this rule.

B. Carrier Charges and Offsets --

1. Failure to Comply with This Rule -- If a telecommunications corporation fails to meet the network guidelines, service quality guidelines, reporting and monitoring requirements, or other duties imposed on it by this rule, any affected telecommunications corporations may file a petition with the Commission to enforce the provisions of this rule. The proceeding may be brought on an expedited basis as provided in 54-8b-17.

2. Service Interruption -- A telecommunications corporation shall be entitled to a billing credit against amounts owed to an other telecommunications corporation for service interruption as follows:

a. If the telecommunications corporation's service or facility from another telecommunications corporation is interrupted and remains out-of-service for more than four but less than eight continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to one tenth of the providing telecommunications corporation's monthly rate for the affected service.

b. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than eight but less than 24 continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to the providing telecommunications corporation's monthly rate for the affected service.

c. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than 24 continuous hours after being reported by the-of-service interrupted telecommunications corporation or found to be interrupted by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to three times the providing telecommunications corporation's monthly rate for the affected service.

KEY: interconnection, public utilities, telecommunications
June 1, 1999 54-8b-2
Notice of Continuation December 30, 2013

R746. Public Service Commission, Administration.
R746-400. Public Utility Reports.
R746-400-1. Scope and Applicability.

This rule is promulgated by Section 54-3-21 and applies to public utilities and telecommunications corporations operating in the state of Utah. This rule shall not limit the ability of the Commission, or the Division, to otherwise obtain information from these entities, as provided by other rules or statutes.

R746-400-2. Division Authority.

The Division shall ensure compliance with this rule, prepare and distribute report forms, collect and store the completed reports and information provided by reporting entities subject to in this rule.

R746-400-3. General Definitions.

For purposes of this rule, the terms listed below shall bear the following meanings:

A. "Reporting entity" means a public utility as defined in Section 54-2-1, and a telecommunications corporation as defined in Section 54-8b-2.

B. "Commission" means the Public Service Commission of Utah.

C. "Division" means the Division of Public Utilities within the Department of Commerce of the State of Utah.

R746-400-4. Reports to the Commission.

A. Report Form Purposes -- The Division shall design report forms that will provide information from reporting entities useful to the Commission and the Division in performing their statutory duties and to administer Commission supervised or directed programs. These forms shall include, but are not limited to, reports used to provide information on a reporting entity's monthly and annual operations, reports concerning an entity's gross revenues used to calculate the public utilities' regulation fee under Section 54-5-2, and reports used in the administration the State of Utah Universal Public Telecommunications Service Support Fund, lifeline programs, and telephone relay program.

B. Acceptable Report Forms --

1. The Division shall make report forms available to all reporting entities. Applicable report forms for any report shall be available at least 60 days prior to the date the report is due to be completed by a reporting entity. The Division shall design report forms that clearly state the due date for the report and shall provide, as needed, directions, definitions and other information that will assist a reporting entity in completing a report form.

2. The Division may accept a reporting entity's request that an alternative report form or document, used to furnish information to federal government agencies, other agencies of this or other states, or for the entity's other needs or uses, be used in lieu of all or part of a Commission report form. The Division may require that the alternative report form or document be supplemented with other or additional information in order to obtain the same information as sought in the Utah report form.

C. Report Certification and Corrections -- Each report shall be signed by a responsible officer of the public utility certifying that the report is true and correct. If a reporting entity learns that any portion of a filed report is incorrect, it shall file corrected pages as soon as possible with an explanation of the corrections. The utility shall file an electronic copy of the report, in addition to a paper copy, if the report is prepared electronically.

R746-400-5. Copies of Reports to Federal Government Agencies.

Upon request of the Division, each reporting entity shall provide the Division with a copy of any report filed with the following federal government agencies: Federal Energy Regulatory Commission, Federal Communications Commission, Rural Utility Services, Securities and Exchange Commission, and Surface Transportation Board. The reporting entity shall provide to the Division the requested reports within 10 days of receiving the Division's request.

R746-400-6. Copies of Reports to Shareholders and Audited Financial Reports.

A. Annual Report -- Each reporting entity shall provide the Division with a copy of any annual report sent to shareholders within 10 days of its issuance.

B. Audited Financial Statements -- Upon request of the Division, a reporting entity shall provide the Division with a copy of any audited financial statements, including the opinion statements of the auditor, if the statements are prepared for the reporting entity.

R746-400-7. Confidentiality.

A. Public Information -- Reports filed pursuant to this rule shall be considered public information unless otherwise provided.

B. Protected Documents -- If a reporting entity desires that any report, copy or document, or any portion thereof, required by this rule, be treated in any manner other than as public information, it shall comply with the provisions of the Government Records Access and Management Act, Title 63G, Chapter 2, and provide a written claim of confidentiality and the reasons supporting that claim. If the records, or portions thereof, are classified as protected under GRAMA, the Division shall maintain the confidential reports in a separate file and disclosure to anyone outside of the Commission, its staff, the Division, and the staff of the Committee of Consumer Services, shall only be as allowed by GRAMA.

KEY: public utilities, reports, rules and procedures
October 30, 2002 **54-2-1**
Notice of Continuation April 27, 2017 **54-8b-2**
54-5-2
63G-2-101

R746. Public Service Commission, Administration.
R746-401. Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets.
R746-401-1. Applicability.

A. These rules shall apply to each gas corporation, electrical corporation, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer, except independent energy producers exempt under Section 54-2-1, operating as a public utility in Utah under the jurisdiction of the Public Service Commission of Utah.

B. These rules shall not be applicable to the repair or replacement of existing utility assets, except as noted in Section R746-401-3.A.3.a.

C. Transactions shall not be artificially divided to avoid these reporting requirements.

D. These rules shall not limit the Commission's jurisdiction to review, at the Commission's discretion, transactions not specifically covered by these rules.

E. A utility may apply to the Commission for the modification of these rules or for temporary or permanent exemption from their requirements if unreasonable hardship results from their application.

R746-401-2. Definitions.

A. For purposes of these rules:

1. "Commission" shall mean the Public Service Commission of Utah.

2. "Gross investment in utility plant devoted to Utah service" shall mean the Utah allocated portion of the total of the following types of accounts: Plant in service, property under capital leases, plant bought or sold, completed construction not classified, and experimental plant unclassified. The following types of accounts shall not be included: Plant leased to others, property held for future use, construction work in progress, and acquisition adjustments.

3. "Book cost" shall mean the amount at which an asset is recorded in the books of the utility without deduction for accrued depreciation, depletion, amortization, etc.

B. For purposes of these rules, public utilities are divided into the following categories:

1. Large utilities - a public utility serving an annual average of 20,000 or more customers or access lines in Utah as set forth in its most recent annual report on file with the Commission and wholesale electrical cooperatives.

2. Small utilities - a public utility serving less than an annual average of 20,000 customers or access lines in Utah as set forth in its most recent annual report on file with the Commission.

R746-401-3. Reporting Requirements.

A. Each public utility shall file a report with the Commission, at least 30 days before beginning construction, by the utility or contracted by the utility, or before the purchase or acquisition of the following utility assets and any other utility plant devoted to Utah service, the cost of which is in excess of the lesser of $10,000,000 or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission:

1. gas corporations --

a. any manufactured gas production facility, or liquids separation or sweetening plant facility, or gas reinjection plant facility.

b. any natural gas storage reservoir or liquified natural gas storage facility.

c. any natural gas transmission pipeline the size of which is:

i. large utilities - eight inches or greater in diameter and 20 miles or more in length

ii. small utilities - four inches or greater in diameter and ten miles or more in length

2. electrical corporations, wholesale electrical cooperatives and independent energy producers --

a. any coal mine, uranium mine, geothermal well or other fuel source development

b. any electrical generating facility of ten megawatts or greater

c. any electrical transmission line ten miles or more in length and the design voltage of which is:

i. large utilities - 138 kilovolts or greater

ii. small utilities - 69 kilovolts or greater

3. telephone and telegraph corporations --

a. any new central office or complete replacement of an existing central office in Utah the size of which is:

i. large utilities - 5,000 or more access lines in service

ii. small utilities - 500 or more access lines in service

4. water corporations --

a. any water well or spring development

b. any water storage reservoir

c. any water transmission pipeline one mile or more in length

5. sewerage corporations --

a. any sewer treatment facility

b. any sewer transmission pipeline one mile or more in length

6. heat corporations --

a. any heat production facility

b. any heat transmission pipeline one-quarter mile or more in length

B. Each public utility shall file with the Commission, at least 30 days before its being consummated, a report of the sale, transfer or other disposition by that utility of utility assets having a book cost allocated to Utah in excess of the lesser of ten million dollars or five percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.

C. Each public utility shall file with the Commission, at least 30 days before being placed into effect, a report of the construction, purchase, acquisition, sale, transfer or other disposition by that utility of nonutility assets having a book cost in excess of the lesser of twenty million dollars or ten percent of gross investment in utility plant devoted to Utah service at the latest balance sheet date as set forth in its most recent annual report on file with the Commission.

D. The utility shall file with the Commission an original and 12 copies of the report on each transaction described in the foregoing sections.

E. The report of each transaction shall contain, at least, the following information:

1. The utility's name and address, and a brief description of the utility's service territory;

2. Description of the subject transaction, the purposes and reasons for the transaction, and the location and purposes of the subject assets;

3. Information to show that the utility has or will get any required consent, franchise or permit from the proper county, city, or other public authority and any other necessary authorizations from the appropriate governmental bodies;

4. Dates assets are to be constructed, bought or otherwise acquired, or sold, transferred or otherwise disposed of;

5. Estimated construction cost of the assets or book cost and accumulated depreciation, depletion or amortization of assets acquired, sold, transferred or disposed of;

6. Information to show that any proposed line, plant or system will not conflict with or adversely affect the operations of any existing certificated public utility which supplies the

same product or service to the public and that it will not constitute an extension into the territory certificated to any existing public utility which supplies the same product or service to the public;

7. Financial statements of the utility demonstrating adequate financial capacity to support the construction or acquisition of the proposed assets, and information concerning any proposed financing arrangements necessary to finance the proposed assets;

8. Estimated effect of the transaction on current utility rates and charges; and

9. Other information as the Commission may require.

F. Any report filed with the Commission shall be updated or supplemented if there are significant changes in the subject transaction.

R746-401-4. Commission Action.

Reserved.

KEY: public utilities, rules and procedures, contracts
1989 54-4-1
Notice of Continuation December 3, 2014 54-4-7

R746. Public Service Commission, Administration.
R746-409. Pipeline Safety.
R746-409-1. General Provisions.

A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, the following rules shall apply to persons engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.

B. Adoption of parts of CFR Title 49 -- The Commission adopts and incorporates by this reference the following parts of CFR Title 49, effective September 1, 2015:

1. Part 190 with the exclusion of Part 190.223 which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;
2. Part 191;
3. Part 192;
4. Part 198; and
5. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1.B, including all minimum safety standards.

R746-409-2. Definitions.

For purposes of these rules, the following terms shall bear the following meanings:

A. "Authorized Inspector" means a person employed or authorized by the Commission or the director of the Division.

B. "CFR" means the Code of Federal Regulations;

C. "Commission" means the Public Service Commission of Utah;

D. "Division" means the Division of Public Utilities, Utah Department of Commerce;

E. "Federally Reportable Incident" has the same meaning set forth in Part 191.3. Definitions, Incident.

F. "Operator" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Operator.

G. "Part 190" means CFR Title 49, Part 190, Pipeline Safety Programs and Rulemaking Procedures.

H. "Part 191" means CFR Title 49, Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.

I. "Part 192" means CFR Title 49, Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

J. "Part 198" means CFR Title 49, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs.

K. "Part 199" means CFR Title 49, Part 199, Drug and Alcohol Testing.

L. "Pipeline Facility" has the same meaning set forth in Part 191.3 Definitions, Pipeline facility.

M. "State Reportable Incident" means an event that falls within the definition of a federally reportable incident or a safety-related condition as identified in CRF Title 49, Part 191.23, Reporting safety-related conditions, or meets one or more of the following:

1. Results in damage to any segment of:
a. steel main, twelve inches or greater in diameter, or
b. transmission pipeline;
2. Requires removal from service or repair of any segment of:
a. steel main, twelve inches or greater in diameter, or
b. transmission pipeline;
3. Results in property damage of $15,000 or more, including the loss to the operator and others, or both, but excluding the cost of gas that is lost;
4. Results in the loss of gas service to ten or more customers; or
5. Results in the known evacuation of any highly populated areas including commercial businesses, office buildings, eateries, schools, churches or public meeting places.

N. "Transportation of Gas" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Transportation of gas.

R746-409-3. Inspections.

A. Access for inspection

1. During Normal Business Hours -- During normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's offices and pipeline facilities to inspect and examine the records and pipeline facilities, if the records and pipeline facilities are relevant to determining compliance with applicable state and federal pipeline safety statutes, rules and regulations.
2. Outside of Normal Business Hours -- For incidents occurring outside of normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's pipeline facilities involved in or associated with an incident to inspect and examine the pipeline facilities, if inspection of the pipeline facility is relevant to determining compliance with applicable state and federal pipeline safety statutes, rules and regulations.

B. Reasons for Inspection -- Inspections are ordinarily conducted pursuant to one of the following:

1. Routine inspection, including but not limited to a compliance inspection;
2. A complaint received from a member of the public;
3. Information obtained from a previous inspection;
4. A pipeline incident; or
5. When deemed appropriate by the Commission.

C. Testing -- To the extent necessary to carry out its responsibilities, the Commission may require testing of portions of intrastate pipeline facilities which have been involved in or affected by an incident.

D. Further Action -- When information obtained from an authorized inspector or from other appropriate sources indicates that further action is warranted, the Division shall issue a warning letter to an operator and, if necessary, initiate proceedings, including but not limited to seeking the issuance of Commission subpoenas to compel the production of records and the taking of testimony, hearings and related procedures, before the Commission.

R746-409-4. Reporting and Notification Requirements.

A. An operator must comply with the notification and reporting requirements contained in Part 191 and Section R746-409-4.

B. Telephonic notification to the Division.

1. For incidents requiring immediate notice under Part 191.5, an operator must also provide contemporaneous telephonic notification of the same information required under Part 191.5 to the Division at (844)-GAS-2525 or (844)-427-2525.
2. State Reportable Incidents. An operator must provide telephonic notice to the Division at (844)-GAS-2525 or (844)-427-2525 of all state reportable incidents, including the location and known details at the time of reporting, at the earliest practicable moment when safely possible following discovery.

C. Written Reports required by Part 191. For all reports required under Part 191, including updates and supplemental reports, an operator shall contemporaneously furnish these reports to the Commission and the Division in accordance with Section R746-409-4.F.

D. Excavation Damage Quarterly Report. Each operator with more than 10,000 customers shall file a quarterly excavation damage report within 60 days after the end of the each quarter with the Commission and the Division in accordance with Section R746-409-4.F on a form approved by the Division.

E. Reports Relating to Safety Issues. An operator shall prepare and file reports relating to safety issues as requested and described by the Commission or the Division in accordance with Section R746-409-4-F.

F. Filing of Written Reports:

1. All required written reports shall be filed with the Commission in accordance with Commission's filing requirements posted on the Commission's website at http://www.psc.utah.gov at the "Filing Req" tab under the Document column labeled "Pipeline Safety."

2. All required written reports shall be filed electronically with the Division at the following e-mail address: pipelinesafety@utah.gov.

R746-409-5. Written Plans.

A. An operator must develop and implement all plans required in Parts 192 and 199, including operations and maintenance plans, emergency response plans, public awareness plans, operator qualifications plans, anti-drug and alcohol misuse plans, and integrity management plans (both transmission and distribution). These plans must be made available to the Commission or the Division upon request.

R746-409-6. Remedies.

A. Rules of Practice and Procedure -- The Commission's Administrative Procedures Act Rule, Subsection R746-1, shall govern and control proceedings before the Commission regarding pipeline safety, with the exception of the additional remedies and procedures specified herein.

B. Hazardous Facility Order -- If the Commission finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. Civil penalties set forth in Section 54-13-8 may also be imposed. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action as may be appropriate.

C. Waiver of Notice and Hearing -- The Commission may waive the requirement for notice and hearing in Subsection (B) above before issuing an order pursuant to this section when it or the Division determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Commission shall include in the order an opportunity for hearing as soon as practicable after issuance of the order.

D. Hazardous Conditions -- The Commission may find an intrastate pipeline facility to be hazardous under paragraph 2 of this section if:

1. Under the facts and circumstances the Commission determines the particular facility is hazardous to life or property; or

2. The intrastate pipeline facility, or a component thereof, has been constructed or operated with equipment, material, or technique which the Commission determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Commission that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

E. Considerations -- In making a determination under paragraph (D)(2) of this section, the Commission may consider, if relevant:

1. The characteristics of the pipe and other equipment used in the intrastate pipeline facility involved, including its age, manufacturer, physical properties, including its resistance to corrosion and deterioration, and the method of its manufacture, construction, or assembly;

2. The nature of the materials transported by the facility, including their corrosive and deteriorative qualities, the sequence in which the materials are transported, and the pressure required for the transportation;

3. The aspects of the areas in which the intrastate pipeline facility is located, in particular the climatic and geologic conditions, including soil characteristics, associated with the areas, and the population density and population and growth patterns of such areas;

4. A recommendation of the National Transportation Safety Board issued in connection with an investigation conducted by the board;

5. Other factors as the Commission may consider appropriate.

F. Contents of Hazardous Facility Order -- A Hazardous Facility Order issued by the Commission shall contain the following information:

1. A finding that the pipeline facility is hazardous to life or property;

2. The relevant facts which form the basis for the finding;

3. The legal basis for the order;

4. The nature and description of particular corrective action required of the respondent;

5. The date by which the required action must be taken or completed and, where appropriate, the duration of the order.

G. No Longer Hazardous -- The Commission shall rescind or suspend a Hazardous Facility Order whenever it determines that the facility is no longer hazardous to life or property.

KEY: rules and procedures, safety, pipelines
March 30, 2016 54-13-3
Notice of Continuation March 31, 2016 54-13-5
54-13-6

R746. Public Service Commission, Administration.

R746-700. Complete Filings for General Rate Case and Major Plant Addition Applications.

R746-700-1. General Provisions Applicable to All 7XX Series Rules.

This rule provides provisions for complete filings for general rate case and alternative cost recovery for major plant addition applications and other 7XX series rules, meaning R746-700-1 through and including R746-700-51.

A. Purpose. The 7XX series rules apply to an application for a general rate case filed by a public utility for an increase or decrease in base rates pursuant to 54-7-12 and an application for alternative cost recovery for a major plant addition filed by an electrical corporation or gas corporation public utility for cost recovery of a major plant addition pursuant to 54-7-13.4.

B. A public utility anticipating to file a general rate case or major plant addition application shall file with the Commission a non-binding notification of its intent to file such application at least 30 days prior to the anticipated filing date of the application. The notification shall be served on all parties that participated in the public utility's last prior general rate case or major plant addition proceeding respectively. The Commission may grant an exception or modification to this notification requirement based on a showing of good cause by the public utility.

C. Minimum filing requirements for a complete filing. Sections 700-10, 700-20, 700-21, 700-22, 700-23, 700-30, 700-40, 700-41, 700-50, and 700-51 set forth the information which must be contained in an application, testimony, exhibits, evidence, data, and any other informational documents filed with an application for the application to be considered a complete filing pursuant to 54-7-12(2) or 54-7-13.4(2).

D. Paper and Electronic media documents.

1. All documents filed with the Commission shall conform to the requirements of Subsection R746-1, Public Service Commission Administrative Procedures Act Rule.

2. A proceeding participant is encouraged to provide voluminous material to other participants in a proceeding in an electronic media version. Unless a participant in a Commission proceeding notifies the Commission and other proceeding participants that it is unable or unwilling to receive documents in electronic media, provision of documents to a participant need only be in electronic media.

3. An applicant shall provide electronic media versions of its application and additional information and documents to be provided pursuant to any series 7XX rule to the Division of Public Utilities and the Office of Consumer Services, other parties granted intervention in the utility's last prior application proceeding, and any other person that has petitioned for intervention in the proceeding. An applicant need not provide these documents to a person whose intervention it opposes unless and until the person is granted intervention by the Commission. Notwithstanding the foregoing, the applicant shall provide a reasonable number of paper copies of the documents to the Division of Public Utilities and the Office of Consumer Services upon request.

E. Format, detail, etc. of documents, information, data, etc., indication of non-existence of information or unavailability of information of the type, detail or format described in a rule provision in the public utility's normal course of business and accounting, and confidential and privileged documents or information.

1. The format, detail, etc. of documents, data, information, etc. provided pursuant to any 7XX series rule shall be in the same format, detail, etc. as provided in the public utility's last prior proceeding or as otherwise directed by the Commission in or subsequent to the last prior proceeding. If a document, spreadsheet, schedule, etc. has internal formulas or other types of inter-cell relationships, the electronic media version shall be provided with such formulas or cell relationships intact.

2. If any series 7XX rule requires particular documents, data, information, etc. to be produced and the documents, data, information, etc. do not exist, the proceeding participant shall specifically so indicate. If any 7XX series rule requires information to be produced of a certain type or in a certain detail, format, etc. which is not so maintained in the normal course of business and accounting, the participant will so indicate and identify and provide what information does exist as maintained by the participant.

3. Information claimed to be confidential that would fall within any 7XX series rule that is filed or provided by a proceeding participant in connection with an application shall be filed or provided under the terms of R746-1-601 through 605 or any applicable protective order. If a proceeding participant believes a document, data, information, etc. would fall within any 7XX series rule but claims a privilege affects its production, in lieu of providing the document, data, information, etc., the participant shall provide a description of the document, data, information, etc. and explain the privilege's application to the document, data, information, etc.

R746-700-10. Test Period Information to Be Included With a General Rate Case Application.

A. Cases where the test period is first identified in the application.

1. The applicant will provide information which will demonstrate what adjustments are required to be made to the 12 months of actual, unadjusted results of operations data, including all regulated costs and revenues, contained in the most recent periodic reported results of operations submitted to the Commission, to arrive at the test period used by the applicant in its application, on both a Utah jurisdiction and total company basis. If the public utility does not submit periodic reported results of operations to the Commission, the applicant shall use the public utility's most recently audited 12-month period in lieu thereof as the base period upon which the test period used in the application is developed.

a. Adjustments to be demonstrated include, but are not limited to: normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not supported or advocated by the applicant for use in the general rate case) contained in the application, and all further adjustments to arrive at the test period used by the applicant in the general rate case filing.

b. The applicant will provide information explaining why the test period used is the most appropriate for the case.

c. In addition to the information relating to each adjustment identified in compliance with R746-700-10.A1.a, the applicant will also provide a summary index which identifies each adjustment or portion of an adjustment made in the filing material which can be used to locate where each adjustment or portion thereof is addressed, treated, applied, etc. in the application, testimony, exhibits and other documentation submitted. The summary index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

2. If the test period used in the application is a future test period, in addition to the demonstration of adjustments to be made for the test period used by the applicant in the general rate case application, the applicant will make the same demonstration for the 12-month period ending on the last day of June or December, whichever is closest, following the filing date of the application if this alternative period does not have an end date beyond the test period used in the general rate case application.

B. Cases where the test period is identified and approved

prior to the filing of an application.

1. An applicant planning to file an application may first request Commission approval of a test period to be used prior to filing an application. The request to approve the proposed test period shall be accompanied by testimony and exhibits providing information supporting the proposed test period.

2. Subsequent to the Commission's approval of a test period, the applicant may then submit an application, using as the test period for the case the test period previously approved by the Commission and need not provide the alternative test period demonstration required by R746-700-10.A.2.

R746-700-20. Information For a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using the allocation methods used in the public utility's last general rate case proceeding or any allocation method subsequently approved by the Commission. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-20 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. Historical results of operations information:

1. actual, unadjusted results of operations, including all regulated costs and revenues, for an historical 12-month period as contained in its last periodic reported results of operations filing submitted to the Commission.

2. adjusted results of operations for the same period.

3. a description of any significant changes in accounting policies for the 24-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a forecasted test period is used, any future significant changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

B. If a non-forecasted test period is used in the application, the applicant shall provide information identifying and supporting each and every modification to the historical results of operations to arrive at the non-forecasted test period used in the general rate case application.

C. If a fully or partially forecasted test period is used in the application, which forecasted test period was not previously approved by the Commission for the general rate case application, the following forecasted test period information shall be provided (the format of the forecasted test period data shall be comparable to the historical results of operation information):

1. Revenues, with details supporting the test period revenues including (as applicable):

a. Usage, per customer by customer class

b. Demand and energy usage

c. Assumptions used in the development of the revenue forecasts

d. Billing determinants, by customer class, used to calculate the forecast test period revenues.

e. Charges, fees, and rates used in the forecast development

f. Contract changes or other specific changes anticipated in the forecast.

2. Operating Costs, using the same cost categories as used in the base period used for compliance with R746-700-10.A, with details supporting the test period operating cost information, including:

a. Forecasted costs relying on escalators or drivers will include the details of the base costs and the key drivers that impact the forecasted amount. If forecasted costs are not based on historical levels that have been inflated or escalated, the applicant shall provide supporting documents in the most detailed level available.

b. The information will identify the index or rate of inflation applied to accounts, budget items or specific cost components that result in adjusted costs in the forecasted test period. Source documents supporting the index or rate of inflation applied will be identified and will be provided or made available.

3. Labor Costs shall be identified separately. The applicant will provide:

a. The actual most recent number of full-time equivalent employees and, separately, the forecasted number of full-time equivalent employees for the forecasted period. The most recent number of actual contract labor employees and the forecasted number of contract labor employees for the test period will also be provided as available and separately identified. The most recent number of actual union labor employees and the forecasted number of union labor employees for the test period will also be provided as available and separately identified.

b. The associated costs related to the full time equivalent labor and contract labor levels. Direct employees, contract employees, union and nonunion employees will each be provided separately.

c. Overtime costs, premiums, incentives, or other labor costs included in the forecast, with each provided separately. Union and nonunion costs shall be provided separately.

d. Any assumed salary and wage increases included in the projected labor costs will be identified. Any of the increases supported by a union contract will be so identified.

e. Pensions and benefits, overheads or other employee benefit costs that are included in the forecast period. Each of the separate employee benefit components will be separately identified (i.e., medical, dental, pensions, etc.) Any assumptions regarding projected increases in such costs caused by factors other than changes in full time employee levels will be identified and described, with supporting assumptions identified.

f. If projected increases in pension expense cause a material cost impact, at a minimum, the following information should be provided for one year prior to the historical period through the test period: service cost, interest cost, expected return on assets, net amortization and deferral, amortization of prior service cost, and total net periodic pension cost. The information shall also include for each of the 12-month periods the expected long-term rate of return on assets, discount rate, salary increase rate, amortization of transition asset or obligation, percent of pension cost capitalized, minimum required contribution per IRS, maximum allowable contribution per IRS, and actual (or projected) contribution made to the trust fund. Also included shall be the projected year-end balance at the end of each of the 12-month periods for accumulated benefit obligation, projected benefit obligation, fair value of plan assets, and market related value of assets.

4. Capital Expenditures or additions. The applicant will provide capital expenditures detail, and changes affecting rate base, including:

a. The detail for the changes, beginning with the start of the historic period results of operation through the test period. The detail will include dollar amounts and in-service dates.

b. The detailed calculation of depreciation expense and accumulated depreciation impacts as a result of the capital expenditures affecting rate base. For depreciation expense, the information will include the balances by plant account or

function, depending on how the projection is done, to which the depreciation rates are being applied and the respective depreciation rates being used, by account or function, depending on how the projection is done.

c. Interdependencies of capital expenditures to operation and maintenance items will be identified.

d. A list will be provided of all major capital additions to rate base individually exceeding $1,000,000 or 0.01% of total company net plant in service, whichever is greater for each year, beginning with the year prior to the historic periodic reported year through the test period. Projects under $1,000,000 shall be grouped in aggregate utilizing the utility's usual plant categorizations. A brief description will be provided for each major capital addition in the list.

i. exceeding 0.1% of total company net plant in service or $5,000,000, whichever is greater, for an electrical corporation, or

ii. exceeding 0.1% of total company net plant in service or $1,000,000, whichever is greater, for a gas corporation.

e. Detailed calculation of plant retirements.

5. Regulatory Adjustments. The applicant will provide details of all the regulatory adjustments required in the filing:

a. Information for recurring regulatory adjustments, such as amortizations, indicating compliance with past Commission orders for any item included in the filing.

b. Separately, a reversing adjustment and the reasons for non-inclusion or departure from a Commission ordered practice or adjustments if the applicant does not wish to have them apply to the application.

c. Unless already included in unadjusted results, regulatory adjustment information will include disallowances from prior orders, implementation of accounting orders approved by the Commission, or other adjustments necessary to make the forecasted test period data acceptable for ratemaking in Utah. Each of the regulatory adjustments will be supported by prefiled testimony or a detailed description contained within the schedules.

6. Other Rate Base. Details of other rate base accounts shall be provided by the applicant. For other items of rate base, such as deferred debits, accumulated deferred income taxes, materials and supplies, miscellaneous rate base, customer advances, deferred credits, etc., the applicant shall provide information showing the 12-month period of the historical results of operations, and any changes, both debits and credits, to those amounts through the test period resulting in the projected amount included in the filing. The information shall provide descriptions of any adjustments and modifications made to the historical period amounts and assumptions included in the projections. For any accounts in which no change from the historical level is proposed, a description of why the amount is not forecasted to change shall be included.

7. Taxes. Forecasting methods, calculations and key assumptions used to adjust historical tax information to projected costs and results will be provided on a tax item basis (i.e., income, FICA, property taxes, etc).

R746-700-21. Cost of Service and Rate Design Information for a General Rate Case Application for an Electrical Corporation or a Gas Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-21 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. A Utah Class Cost of Service Study.

1. A Utah Class Cost of Service Study based on the test period with supporting documentation including the development of allocation factors.

2. If a new customer class is proposed, the applicant shall either:

a. include class cost of service studies; one which uses only existing customer classes and another with the newly proposed class included, or

b. explain why no cost of service study including the new customer class is included and how the new customer class is to be treated in setting rates in the case.

B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement. An exhibit will be provided showing the test period blocking based on adjusted actual and forecasted billing units in the development of the revenues for each rate schedule.

D. Its proposed tariff sheets for all tariff provisions for which it proposes changes.

1. An applicant need not include proposed tariff sheets for changes to tariff pages showing rates, charges, or fees if these proposed price changes are provided in a readily identifiable form elsewhere in the application.

R746-700-22. Additional Information for a General Rate Case Application Using a Forecasted Test Period Filed by an Electrical Corporation or a Gas Corporation.

If not already included with the application, pursuant to R746-700-20 or R746-700-21, an applicant shall also file with the Commission the following information or documents when filing a general rate case application which uses a forecasted test period. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-22 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation or gas corporations shall provide the following information and documents to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

A. Definitions. As used herein, the following terms shall have the indicated meanings:

1. Time Periods. Definitions of time periods for which information is to be provided in compliance with this rule are as follows:

a. Year: A 12-month period designated as "12 months ending Month Date, Year".

b. Base Year (BY): The 12-month historical period ending on the ending date for the most recent periodic reported results of operations filing submitted for the public utility, or if it does not file periodic results of operations, the base period upon which the test period used in the application is developed.

c. Test Period (TP): The 12-month period used as the test period for the general rate case application.

d. Historical Year(s) (HY): Year(s) immediately preceding the Base Year.

e. To Date: Up to the most recent date for which information is reasonably available to the public utility in preparing its general rate case application.

f. Workpapers: The documents and source material used to develop the inputs to the general rate case filing. The type,

nature, level of detail, format, etc. of the information compilation, schedule, document, etc. shall be reasonably comparable to that provided to parties in the public utility's prior general rate cases.

2. Provide, Describe, etc. The terms "provide" or "describe," or terms with similar meaning, shall mean to deliver available electronic copies and/or paper copies of designated data and documents to interested persons; provided that, when necessary and appropriate, prompt arrangements may be made for review of designated data and documents at a utility location in Utah or at another mutually agreeable place. Spreadsheets and workpapers are to be provided in "live" electronic format (not PDF), i.e. models and spreadsheets are to be provided with formulas intact and input data available.

3. Materiality. Materiality is defined as a change in requested Utah jurisdictional revenue requirement equal to or greater than 0.1 % of total state revenue requirement or $500,000, whichever is less.

4. Model(s). The term Model(s) shall mean the major analytical software tools and spreadsheets used by the utility to develop its general rate case application. Smaller analytical tools, such as special purpose electronic spreadsheets, are not included in the definition of the term Model(s) for purposes of this rule.

B. Revenue Requirement Information.

1. Forecasted test period data. A comparison of the Test Period data Results of Operations (RO) to the Base Year actual, unadjusted RO and adjusted RO on both a jurisdictional and total company basis. This is to be made available in a side-by-side comparison on a consistent basis by FERC Account.

2. Operating and Capital Budgets. A comparison of the utility's operating budget and capital budget to the actual results for the Base Year, the prior Historical Year, and To Date on a total company basis. This comparison is to be at the most detailed level available and provide available explanation for material variances.

3. Labor Costs. A comparison of budgeted labor costs and number of full-time equivalents to the actual labor costs and full-time equivalents by year for the Base Year and the prior Historical Year on a total company basis. These shall show separately, to the degree available, the direct labor costs, premiums, incentives, benefits and overhead costs. These shall show contract labor costs separately from direct labor costs, and union labor costs separate from nonunion costs. The information shall provide available explanations for material variances.

4. Workpapers. The information shall provide the forecast workpapers (including assumptions, spreadsheets and tests).

5. Forecasted Data - Revenue Requirement.

a. Support and explanations for forecasted values, including Base Year starting values, adjustments made to the Base Year values and key drivers that impact the forecasts, together with supporting documents.

b. Indices, inflation rates and escalation factors used in preparing forecasts, including supporting source documents.

c. A revenue requirement workbook that tracks all input data beginning with the Base Year through the Test Period. This will provide summarized revenue requirement sections of the jurisdictional allocation model for the Base Year, the Test Period and any intervening year. The workbook and summaries are to include, inter alia, billing determinants, rate base and capital structure, including dollar capitalization, for the specified Years.

d. Complete net power cost calculations for any intervening year between the Base Year and Test Period.

6. Models. Workable versions of Models utilized in determining or projecting rate case values, with formulae intact and source data included, along with available instructions and write-ups regarding use of the Model and written descriptions of the Model and its inputs.

C. Cost of Service Information

1. Forecasted Data - Class Cost of Service. Class cost of service data on a Utah allocated basis under all approved jurisdictional allocation methods for the Base Year and Test Period.

2. Forecasted Data - Rate Design. Test Period rate design data on a Utah allocated basis under all approved jurisdictional allocation methods used for reporting purposes.

D. Miscellaneous Information

1. Accounting - Changes. A detailed description of Material changes in accounting policies or procedures adopted by the utility since the prior general rate case or as anticipated through the end of the Test Period. This will include a detailed description of the impact of change in accounting policy or procedure on the Test Period and identify the basis of the change.

2. Accounting - Write-offs. A detailed description of Material write-offs of assets and/or liabilities from the start of the Base Year - To Date that affect Utah revenue requirement. For each material write-off, the following will be provided:

a. Copy of journal entry recording the write-off;

b. Detailed description of the purpose of the write-off;

c. Copies of studies, reports or analyses done in determining whether or not to write off the asset;

d. Amount of the write-off and identification of the accounts charged on a total Company and a Utah jurisdictional basis; and

e. Amount included in the projected Test Period for write-offs, if any, on a total Company and a Utah jurisdictional basis, by account.

3. Affiliates - Organizational Charts. For the Base Year and Test Period and continuing To Date, the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status.

4. Affiliates. A detailed description of corporate restructurings and changes in affiliate relationships since the filing of the prior general rate case and also describe changes in the corporate and affiliate relationships between the Base Year and the end of the Test Period reflected in the filing.

5. Affiliates. A copy of Material new or Materially modified contracts or agreements entered into since the filing of the prior general rate case, including attachments thereto, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or costs allocated or directly charged to Utah regulated operations included in the general rate case application, between the utility and/or its parent company and affiliated companies for services and/or goods rendered between or among them. This is to include a list of active contracts unless already provided in the most recent Affiliate Interest Report.

6. Affiliates. A copy of cost allocation manuals and/or policies and procedures that set forth the detailed cost allocation methodology and/or pricing methodology used to charge costs between affiliates that have changed since the filing of the prior general rate case.

7. Audit - Financial. A copy of each adjusting journal entry made in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. Supporting documentation will be included. The information will also identify and provide adjusting journal entries included in the independent auditors' final recommendations that were not accepted by or made by the utility, along with a description of why the adjustment was not accepted or made.

8. Audit - Financial. A copy of management letters received from the utility's independent auditors or responses to those management letters for the Base Year, the prior Historical Year and the period To Date.

9. Audit - Financial Audit Workpapers. If access to audit workpapers is allowed by the utility's independent auditor, the utility will coordinate review of the financial audit workpapers for the most recent completed financial audit conducted by the utility's independent auditors at a mutually agreed upon location. If access to workpapers is not allowed by the independent auditor, the utility will coordinate the review of the most recent quarterly review conducted by the utility's independent external auditors prepared for the utility's board of directors.

10. Audits - Internal. A listing of internal audits conducted by or for the utility or its parent company for the Base Year, the prior Historical Year and To Date if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in the general rate case application. Notice of Internal Audit reports completed during the pendency of the case will be provided upon completion to all parties participating in the case.

11. Board of Directors - Meeting Minutes. The Board of Directors' meeting minutes for the Base Year, the prior Historical Year and To Date for the utility and the parent company if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs allocated or directly charged to Utah regulated operations included in general rate case filings for the same period.

12. Budget. Complete copies of detailed annual operating and capital budgets for the Base Year through the end of the Test Period.

13. Budget. Copies of operating and capital budget instructions and directives provided to employees, including assumptions, directives, manuals, policies and procedures, timelines, and descriptions of budget procedures for the budget or forecast for the Test Period and To Date.

14. Budgets - Operating Plans. If available, copies of written operating plans that describe the utility's goals and objectives for the Base Year through the end of the Test Period.

15. Budget - Variance. A complete copy of quantitative and narrative monthly, quarterly and annual comparisons of operating and capital budgets to actual expenditures for the Base Year, the prior Historical Year, and for the period from the Base Year To Date.

16. Cost of Capital - Debt Expense. The currently forecasted financings for the next three years.

17. Cost of Capital - Debt Expense. The monthly balance of short-term debt and monthly short-term debt cost rates, for the Base Year, the prior two Historical Years and To Date.

18. Cost of Capital. Copies of the most recent bond rating agencies reports on the Company.

19. Employee Costs. A breakdown of the total amount of gross payroll and employee benefit costs (by benefit type) for the Base Year, the prior Historical Year and through the end of the Test Period between amounts expensed and amounts capitalized and provide the percentage of payroll and employee benefits (by benefit type) charged to expense for each Year.

20. For the Base Year, the prior Historical Year, To Date and for the Test Period, the amount of overtime, the amount of premium pay, the amount of other salary/labor costs and the amount of incentive compensation in total and expensed for each.

21. Employee Costs. A list of compensation and benefit studies the utility has for the Base Year, the prior Historical Year and To Date and indicate which of the studies were used (if any) in projecting the compensation and employee benefit costs for the Test Period.

22. Employee Costs - Employee Levels. Describe, in detail, Material employee reductions, employee severance plans, or early retirement programs conducted or anticipated by the utility during the Base Year, the prior Historical Year, and To Date and as projected through the end of the Test Period that are and are not reflected in the application. If anticipated, but not reflected in the application, explain why they are not included. This should provide information on major plans or programs beyond cost management efforts undertaken in the normal course of business. This should include, but not be limited to, a detailed description of the plan, number of employees offered or projected to be offered early retirement or severance, number of employees accepting or projected to accept early retirement or severance, projected cost savings and costs associated with the program. For costs incurred, identify the amounts, by FERC account, and the dates the entries were booked.

23. Employee Costs - Employee Level. Separate lists of the budgeted and the actual number of employees (where available), by month, for the Base Year, the prior Historical Year, the Test Period and To Date. If the labor force levels are other than full-time equivalent positions, provide a separate listing stated in terms of full-time equivalent positions.

24. Employee Costs - Wages and Salaries Levels. The actual percentage of increases in salaries and wages for exempt, non-exempt and union employees for the Base Year, the prior Historical Year, Test Period and To Date.

25. Employee Costs - Incentive Plans. Complete copies of bonus programs or incentive award programs in effect for the utility for the Base Year, the prior Historical Year, the Test Period and To Date. Identify incentive and bonus program expenses incurred in the Base Year, the prior Historical Year, the Test Period and To Date and identify the amounts included in the Test Period. Identify the accounts charged. Identify incentive and bonus program expenses charged or allocated to the utility from affiliates or the parent company in the Base Year, the prior Historical Year, the Test Period and To Date.

26. Employee Costs - Benefits. A listing of health and other benefits received by employees during the Base Year. Provide a detailed description of changes to employee benefits occurring subsequent to the Base Year To Date and anticipated future changes through the end of the Test Period that are reflected in the filing.

27. Employee Costs - Pensions. The two most recent pension actuarial reports prepared for the utilty.

28. Employee Costs - Post Retirement Benefits Other Than Pensions (PBOP). The two most recent PBOP actuarial reports prepared for the utility.

29. Employee Costs - Pensions and Post Retirement Benefits Other Than Pensions (PBOP). The list of assumptions used by the utility and its actuaries regarding the pension and PBOP costs for the Test Period that are included in the filing.

30. Operation, Maintenance, Administrative and General (OMAG) Expenses - Other - Contributions. For the Base Year and the Test Period, a list of contributions for charitable and political purposes, if any, included in accounts other than below the line. Indicate the amount of the expenditure, the recipient of the contribution, and the specific account in which the expense is included in the filing. Also identify for the Base Year and the Test Period the amounts of contributions for charitable and political purposes charged to the utility from affiliates in accounts other than below the line accounts.

31. OMAG Expenses - Advertising. For the Base Year, the prior Historical Year and the Test Period the amount of advertising expense, by account, by type of advertising (i.e., informational, instructional, promotional).

32. OMAG Expenses - Dues, Industry Associations. The Material amounts included in the Base Year, the prior Historical Year and the Test Period for above-the-line payments to industry associations. Identify the organization/association name and amounts, along with the account in which the costs are included in the filing. If any of the dues or other amounts paid to the organizations/associations go toward lobbying and public relations efforts and are recorded in above-the-line accounts, provide the associated amounts included in the above-

the-line accounts whether Material in magnitude or not.

33. OMAG Expenses - Outside Services Expense. An itemization of Material outside services expenses included in FERC account 923 for the Base Year, the prior Historical Year and the Test Period.

34. OMAG Expense - Injuries and Damages. The amount of injuries and damages expense for the Base Year, the prior Historical Year, the Test Period and To Date.

35. OMAG Expense - Insurance. The amount of insurance expense, by insurance type (i.e., property insurance, liability insurance, workers compensation, directors and officers liability insurance, etc.) for the Base Year, the prior Historical Year and the Test Period and identify the accounts the associated costs are included in.

36. OMAG Expense - Insurance. For insurance coverage for which the utility is self-insured, a description of that self insurance, a description of how it is accounted for in the utility's books and records and a description of activity for the Base Year, the prior Historical Year and the Test Period.

37. OMAG Expense - Legal Settlements. A list of Material amounts included in the Base Year and the Test Period (on a direct charge basis, affiliate billing, or allocation) that are the result of the settlement of lawsuits or other legal action.

38. OMAG - Uncollectibles - Bad Debt Reserve. For the Base Year, the prior Historical Year and the Test Period the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve adjustment, other charges or credits, and the ending reserve balance. For the same periods, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

39. OMAG - Uncollectibles. A detailed description of changes in the utility's collection policies or write-off policies since the filing of the prior general rate case.

40. OMAG - Cost-saving Programs. A list and detailed description of cost-saving or cost increasing programs and initiatives implemented during the Base Year, To Date, and included in the Test Period. This should provide information on major plans or programs beyond efforts undertaken in the normal course of business and having a Material impact.

41. Financial - Strategic Plans. Copies of completed strategic plans and the most recent plan approved by the Board of Directors for the utility and the plan that was utilized at the time of and in the preparation of its application, if different.

42. Penalties and Fines. A list of penalties and fines in the Base Year and the Test Period and indicate in which accounts the associated amounts are included.

43. Rate Base - Working Capital. A complete copy of the lead/lag study, with supporting workpapers, used to compute cash working capital for the utility's application.

44. Reserve Accounts. Information on whether or not the utility maintains reserve accounts (e.g., an injuries and damages reserve account). If so, provide the monthly balances in reserve accounts for the Base Year, the prior Historical Year, the Test Period and To Date. This listing should include the monthly debits and credits to the reserve accounts. Also, provide the amount included in the Base Year and the projected Test Period expenses, by account, for building-up the reserve balances.

45. Revenues: Regulated Retail Sales. Provide by customer class, by month, the number of customers, actual usage, and normalized usage for the Base Year, the prior Historical Year, the Test Period and To Date.

46. Revenues - Other. Provide on a total company and a Utah jurisdictional basis, for the Base Year, the prior Historical Year, the Test Period and To Date the amount of other nonregulated-retail-sales revenues by revenue type.

47. Sales of Property. For the Base Year, the prior Historical Year, the Test Period and To Date, information showing whether the utility sold property, in which the proceeds for a property, which alone, or for multiple properties, which in the aggregate, would be Material. If so, for each such sale identify the property sold; whether, when, and in what manner it was included in rate base; show details of how the gain or loss was calculated; indicate when the sale occurred; and explain how and whether the utility is treating such gain or loss in its application. For sales in which the proceeds would be Material, individually or in the aggregate, provide a list of any properties currently offered for sale and those projected to be offered for sale through the end of the Test Period. The property sales information may be limited to sales of property that had been or are included in Utah rates while in service.

48. Taxes: Income. A list of and provide copies or make available for review, subject to R746-1-601 through 605, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, depending on specific content, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the filing of the prior rate case.

49. Taxes: Income. Provide copies or make available for review, subject to R746-1-601 through 605, an appropriate protective order, confidentiality agreement, or other confidentiality protective arrangement, copies of the most recent State and Federal income tax returns in which the utility participated.

50. Taxes: Income. Provide a copy of the current tax sharing agreement in which the utility participates.

R746-700-23. Additional Power Costs Information for a Forecasted Test Period to Be Filed by an Electrical Corporation.

A. An electrical corporation that has included power costs in a forecasted test period shall also file with the Commission the following information or documents relating to its power cost projections with a general rate case application. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-23 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified. Contemporaneously with the filing of an application, an electrical corporation shall provide the following information and documents to the parties specified in R746-700-1.E.3, unless the information or document is already included in or with the application.

B. All information should be provided or available electronically and, in the case of Excel spreadsheets, with all formulas intact including all hierarchy of linked spreadsheets. The term "PCM" herein refers to any power cost model used by the utility, or any subsequent enhancements to or replacements of the power cost model used in the utility's last prior general rate case. The term "workpapers" means the documents used to develop the inputs to the PCM. This may include such items such as contracts, emails, white papers, studies, utility computer programs, Excel spreadsheets, word process documents, pdf and text files, computer programs, or any other data or documents relied upon to support the cost details in the application. If the inputs used in the PCM were developed from a document, such as a contract, provide the contract with the PCM inputs highlighted.

C. Power Cost Modeling Data:

1. Workpapers that show the source, calculations and details supporting the testimony, other exhibits and all PCM input data. The workpapers will include, at a minimum, copies of the net power cost report in Excel and the net power cost model database.

2. Identification of the time periods (Reference Period) used to determine input items (e.g., outage rates) in the PCM which are based upon an examination, average, etc. of a multi-

year period.

3. Compilations of actual net power costs produced by the utility that were referenced in the testimony or exhibits, to the extent that actual power cost results are discussed or cited in the utility's testimony or exhibits.

4. A list and explanation of all modeling or logic changes or enhancements to the PCM that have been implemented since the last prior general rate case. This will include a statement of the direction and amount of change in net power costs resulting from each such change and documentation describing each Material change as well as PCM runs and workpapers quantifying the impacts of these changes.

5. Access to or a copy of the PCM model used by the utility to compute power costs in the Test Period.

6. The latest documentation for the PCM.

7. The current topology maps in the PCM along with an explanation for all the differences that have been made to the topology since the last prior general rate case and an explanation of why the changes were made. Include supporting documentation, such as contracts resulting in changes to the transfer capabilities used in the PCM.

8. All documents, workpapers, data or other information used by the utility in determining, setting, or calculating any PCM input, constraint, etc., including, but not limited to, where applicable:

a. market caps,

b. outage rates (planned and unplanned) including all backup data showing each outage (planned or unplanned, etc.) and duration (planned or unplanned) considered in the Reference Period, including NERC cause code, type of event, duration, energy lost, etc.,

c. the date and a copy of any forward price curve used, showing monthly heavy load hour and light load hour,

d. short-term firm transactions (including short-term firm indexed transactions and swaps), each transaction or contract will have a designation as to its purpose (i.e., trading, arbitrage or balancing.),

e. all contracts modeled in the PCM that were not included in or have been amended since the last prior general rate case, providing for each:

(i) A copy of the contract (in pdf or electronic format, if available), and

(ii) input assumptions related to the contract,

f. all fuel cost inputs,

g. heat rate curves for each resource, including the derivation of the heat rate curves,

h. identification of each instance in which the utility changed any maximum capacities, minimum up or down times or unit minimum capacities for thermal or hydro generators modeled in the PCM since the last prior general rate case,

i. each load adjustment,

j. inputs for Qualifying Facility or QF contracts,

k. screens applied to restrict uneconomic dispatch of resources,

l. start up fuel costs, start up O and M costs and any other form of start up costs modeled,

m. loss factor data used to develop the load forecast for the system and for each state for the most recent five calendar years and for the most recent five fiscal years; include a comparison of those loss factors to those that were used in developing loads for the PCM for the test period used in the case,

n. the system level loss factors assumed in any PCM used in the most recent (or current) rate cases for any other jurisdiction in which the utility operates,

o. the actual generation of each coal, gas, hydro and wind generating unit modeled in the PCM for each month for the Reference Period,

p. hourly generator logs for each wind, coal, gas and hydro unit modeled in the PCM for the Reference Period,

q. the schedule for each generation unit's planned and actual outages for the test period, the most recent calendar year and the next four calendar years,

r. hourly logs for all contracts modeled in the PCM, showing actual data (hourly sales or purchases) for the Reference Period,

s. the details of Short Term Firm and Non-Firm transmission used by the utlity during the Reference Period.

t. for each of the transmission contracts whose costs are included in the PCM, identify the purpose of the transaction, why it is used and useful in the test period, the amount of capacity or type of transmission service it provides, and where the capacity or service provided by this contract is modeled in the PCM,

u. data for the Reference Period or for the most recent four years available for all third party transmission imbalance transactions that have been included in Short Term Firm or secondary transactions during that period,

v. any links and other inputs for Short Term Firm (including any related to SP 15) and Non-Firm transmission modeling used in the PCM,

w. the hydro planned and unplanned outage rate,

x. to the extent that the utility uses any ramping adjustment in its case, information describing and detailing all ramping adjustments made (including all ramping energy assumed to be lost for each outage event modeled in the ramping analysis),

y. the costs of wind integration as modeled in the PCM, and

z. hedging contracts, already in place and those assumed for forecasting purposes.

R746-700-30. Information for an Alternative Cost Recovery for a Major Plant Addition Application Filed by an Electrical Corporation or a Gas Corporation.

An applicant submitting an alternative-cost-recovery-for-a-major-plant-addition application shall include the following information as part of the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods where applicable. If the same information was previously provided by the applicant in a prior proceeding in which the plant's construction or acquisition was approved by the Commission pursuant to 54-17-302, the applicant shall provide copies of such previously provided information with the application. If the plant's construction or acquisition was approved subject to conditions pursuant to 54-17-302, the information shall be provided as ordered by the Commission in the order approving the major plant addition subject to conditions. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-30 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. General Information.

1. All documents and presentations that were provided to management, senior management and the Board of Directors of the utility and its affiliates related to the plant addition.

2. Copies of all Board of Directors' minutes of the utility and its affiliates where the plant was discussed, approved, reviewed, evaluated, or presented.

3. Details of the plant being acquired including its location, capacity, technologies used, project milestones or progress dates, projected in-service date and demonstrating that the plant addition is a major plant addition under 54-7-13.4.

4. Description of any changes, modifications, etc. to the existing utility plant/system that may be necessary to integrate the plant addition with the utility's system.

5. Information establishing the prudence of the plant addition, information addressing the provisions of 54-7-13.4, and the provisions of 54-17-302 and 54-17-303.

6. Information establishing the consistency of the plant addition to projected plant acquisitions in the utility's latest Integrated Resource Plan and its Action Plan. Show that the plant addition resource is as favorable or more favorable than the compared Integrated Resource Plan resource items in terms of least cost and least risk or explain why it need not.

7. Any and all documents and analyses that address the plant addition's projected costs, savings and benefits and demonstrate how and when the utility's ratepayers will see a net benefit from the plant addition and quantify the net benefit.

8. Where applicable, information on whether and how the plant addition has been or will be inspected as part of due diligence, including identification of who conducted or will conduct the inspection and copies of all reports or other documents prepared by the inspectors.

9. A list of all outside consultants or advisors used, or expected to be used by the utility in connection with the plant addition and all reports, including interim reports, prepared by outside consultants or advisors.

10. All internal reports that were prepared when analyzing the purchase or construction of the plant addition.

11. Where applicable, copies of contracts that are expected to be assumed following close of acquisition.

12. Where applicable, copies of all contracts between the utility and the seller or operator of the plant addition.

13. Where applicable, a history of the plant addition to be acquired including financial and performance characteristics for the past five years, or from the start of commercial operation, whichever is less.

14. Where applicable, information on the utility's understanding of the reasons why the seller is selling the facility.

15. Where applicable, information on the seller's book value of the plant.

16. An indication whether the seller will allow interested persons who have signed a confidentiality agreement with the utility access to the seller's books and records for audit, and what restrictions may apply to such access.

B. Financial and Revenue information.

1. Provide information of the revenues, costs and benefits arising from the plant addition, identifying any limits and conditions on forecast information/calculations.

2. Information on the net revenue impact of bringing the plant online and operating the plant within the utility's system compared to operations without the plant.

3. Justification for any acquisition premium the utility plans to include in rates and recover from ratepayers.

C. Capital cost, rate base and jurisdictional allocation information.

1. Information on how the utility plans to finance the construction or acquisition of the plant addition. This is to include the timing and amount of any equity, debt, or other security issuances and any documents to, or received from, any investment bankers or other entities regarding the issuance of any securities connected with the plant addition.

2. Information indicating whether the utility has discussed the plant addition with any rating agencies and provide any reports or rating agencies provided with respect to the plant addition. If not, indicate when it plans to discuss the plant addition with any rating agency.

3. Information on how much of the purchase price or construction costs the utility intends to place into rate base.

4. Information showing the amount and relating to any analysis of AFUDC associated with the plant addition.

5. Information on the utility's anticipated jurisdictional allocation for the plant addition and any change in allocation factors and other plant, revenue and expense/cost allocations arising from the plant addition.

D. Cost and Operating Expenses Information.

1. A complete analysis of all costs associated with constructing, acquiring and operating the plant for which the utility will seek recovery from Utah ratepayers and identify any costs for which no recovery will be sought from Utah ratepayers.

2. Information on all clearances, permits or other government regulatory authorizations necessary, to be modified and completed for the plant and their associated costs.

3. Information on any liquidated damages clause and early termination fees, penalties, or other expenses which may be incurred if the plant is not completed or acquired.

4. Information on whether that are any integration costs or fees (transmission, pipeline, etc.).

5. Information on any costs analysis analyzing bringing the plant online.

6. Information on how the plant addition will change and the amount of change on the utility's Operation and Maintenance costs.

7. All operating cost analyses that have been completed related to the plant addition.

8. The planned accounting treatment for the plant, including the proposed journal entries or other accounting entries for such planned accounting treatment.

9. A description of and the amounts for overhead, closing, contingent or any other costs for which the utility expects it will ask recovery as a result of the acquisition.

E. For an electrical corporation, the following Net Power Costs information.

1. The impacts of the plant addition on any utility power cost and production cost dispatch models. If any models are revised to accommodate the plant addition, the revised models will be available to the parties participating in the application proceeding.

2. A net power cost study (NPC) in the utility's production cost dispatch model that documents changes from previous net power cost estimates. All relevant workpapers and documentation to allow any other person to perform an independent analysis and verification of the NPC will be provided.

3. Show how the plant addition impacts planned outages, unplanned outages, and maintenance at the utility's generation resources.

R746-700-40. Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant submitting a general rate case application shall provide the following information with the application, on a total company and Utah jurisdictional basis using Commission approved allocation methods. An applicant will provide an index which identifies where in the application, testimony, exhibits, documents, information, data, etc. filed with the application the applicant has responded to and complied with these R746-700-40 rule requirements. The index may be presented in testimony, as a table embedded in testimony, as an exhibit to testimony, or in any other manner so long as it is clearly identified.

A. General Information

1. Historical results of operations information consisting of actual, unadjusted results of operations, including all regulated costs and revenues, for an historical 12-month period used as a basis for the test period.

2. Adjusted results of operations for the same period. These adjustments shall include, but are not limited to, normalization adjustments, annualization adjustments, accounting adjustments, adjustments to reflect prior Utah regulatory decisions and policies made by the Commission with respect to any item or matter (including those which are not

supported or advocated by the applicant for use in the general rate case) contained in the application.

3. Description and details for all additional adjustments necessary to arrive at the test period used in the general rate case application.

4. A description of any significant changes in accounting policies or procedures for the 12-month period prior to the historical period and any subsequent accounting changes through the date of the general rate case application and, if a future test period is used, any future changes included in a future test period, along with their impact on the filing. Significant changes for this purpose are anything referenced or that would be referenced in footnotes of financial statements or auditor's reports.

5. Information giving a fully referenced Part 64 and, where available, a Part 36 allocation. If no Part 36 allocation information is available, the utility shall provide an alternative permitting comparable cost of service allocations. Fully referenced means that sources of all total amounts are indicated and that source documents are included in the filed information. The names and sources of allocators to determine jurisdictional or non regulated portions shall be included in lines with the allocated amounts. The Part 64 allocation shall provide full allocation of all joint costs incurred by the utility for both non-regulated and regulated activities and affiliated companies.

6. A copy of each adjusting journal entry made with supporting documentation in response to the utility's independent auditors' final recommendations in their most recent audit of the utility. The utility will identify and provide adjusting journal entries included in the independent auditors' final recommendations that were not accepted by or made by the utility, along with a description of why the adjustment was not accepted or made.

7. A copy of management letters received from the utility's outside auditors or responses to those management letters for the time period of the beginning of the historical period to the date of filing of the application.

8. A listing of internal audits, and copies thereof, conducted by or for the Company or its parent for the time period beginning with the historical period to the date of the application, if relevant to the costs the utility seeks to recover from Utah ratepayers through Utah regulatory operations or the costs are allocated or directly charged to Utah regulated operations included in the general rate case application.

9. Beginning with the start of the historical period, provide the affiliates organization chart for the utility including a clear indication of affiliates, parent companies, divisions and subsidiaries indicating their regulatory status. Include a personnel organization chart with names that provides line of authority and reporting for board members, management and mid-management including joint responsibilities for non-regulated affiliate responsibilities.

10. A detailed description of corporate restructurings and changes in affiliate relationships since the prior general rate case and also describe changes in the corporate and affiliate relationships between the historical period and the end of the test period used in the application.

11. Beginning with the two years prior to the historical period through the date of the application, provide the beginning bad debt reserve balance, the amount written off, the recoveries, the reserve adjustment, other charges or credits, and the ending reserve balance. For the same period, provide the total amount of retail revenue from retail sales and total retail bad debt expense.

12. A detailed description of any changes in the utility's collection policies or write-off policies since the last general rate case.

13. A list of penalties and fines in the historical period and the test period and indicate in which accounts the associated amounts are included.

14. Description of all calculations and all supporting spreadsheets and explicit data source information for all numbers in the narrative portion of the application or any testimony and exhibits included with the application.

B. Tax adjustments

1. An exhibit explaining procedures used to calculate test period tax adjustments.

2. An adjustment summary for tax expenses for normalized results of operations.

3. Information explaining every adjustment that is done to test period tax expense and that is shown in the adjustment summary. Adjustments will be in "top sheet" form.

4. A list of, revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

5. A copy of the current tax sharing agreement in which the company participates.

6. List all property held for future use included in rate base. Listed property shall not include any item included in plant in service in rate base and the pro forma balance. The description shall include:

a. Location of property;
b. Date of acquisition;
c. Original cost;
d. Accumulated depreciation;
e. net original cost;
f. Planned or expected in-service date; and
g. Planned or expected use of property.

7. Copies of supporting work papers on the account Property Held for Future Use which shall include an explanation of all additions and transfers, including:

a. Description of property;
b. Description of transaction; and
c. Amount.

C. An applicant need not file the following information or documents with a general rate case application, but shall have such information and documents available for delivery and shall include a certification with its application that this information and these documents have been prepared and are available at the time it files its general rate case application. Contemporaneously with the filing of an application, an applicant shall also deliver this information and these documents to the Division of Public Utilities.

1. The financial audit work papers for the most recent completed financial audit conducted by the utility's independent auditors. The utility will provide a letter authorizing the external audit firm to meet with requesting parties to discuss work papers with them and allow parties to make copies of selected work papers.

2. Any revenue ruling requests, IRS responses, and correspondence between the utility and the IRS since the last general rate case.

3. Copies of the most recent State and Federal income tax returns in which the utility participated.

R746-700-41. Cost of Service and Rate Design Information for a General Rate Case Application for a Telecommunications Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

A. A Utah Class Cost of Service Study or alternative comparable class cost of service information based on the test period with supporting documentation including the development of allocation factors.

B. Its proposal for spreading any Utah revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.

D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

R746-700-50. Information for a General Rate Case Application for a Water Corporation.

An applicant shall be in compliance with the reporting requirements of R746-400 prior to submitting an application for a general rate case. If the applicant is not in compliance with that rule, the applicant shall first submit any missing reports prior to submitting an application for a general rate case. An applicant submitting a general rate case application shall provide the following information with the application:

A. General Information:

1. Most recent Division of Drinking Water certification/report.

2. Certificate of Public Convenience and Need Number granted by the Commission and its date.

3. Date the utility started operation.

4. The number of connections approved and current area served, which may be shown by service area map.

5. Ownership and officers.

6. Associated companies (if any).

7. A copy of its current tariff.

B. Engineering Information.

1. Source of water supply

2. Information for all Wells

3. Mains and meters information

4. Reservoirs information

5. Storage capacity

6. Service deficiencies and remedies

7. Service quality

8. Additions or improvements in the last five years

9. Any anticipated additions or improvements

10. Efforts to encourage conservation

C. Customer Connection Information

1. Each connection identified by unique lot number or address

2. The date first put into service

3. Whether metered or unmetered.

4. Whether classified as residential or commercial

5. The water usage per month or billing cycle, showing minimum and overage gallons used

6. The amount billed per month or billing cycle

7. The anticipated growth, showing minimum and overage gallons used

8. Water usage and billings projected for the next three years

9. Information on any secondary/irrigation water system (the same information as C. 1, 2, 5, 6, 7 and 8 above).

10. Identification whether secondary water is distributed through the culinary system.

D. Accounting and Financial Data, which shall include the prior two complete years and current up to the date of general rate case application, unless otherwise specified:

1. Identification (contact information) for any accountant used by the utility.

2. Copies of the General Ledger.

3. Copies of the Balance Sheet

4. Copies of the Income Statement

5. Pro Forma Income Statements, categorized by the National Association of Regulatory Utility Commissions, NARUC, System of Accounts, to include:

a. the prior two years of revenues and expenses, and

b. the projected revenues and expenses for the next three years, to include the Company's anticipated growth rate and requested rate increase.

6. A copy of or the utility's check register

7. Billing documentation/reports, tied back to the tariff rates

8. Information on the utility plant, including, but not limited to:

a. Acquisition date,

b. Acquisition price or cost,

c. Salvage value,

d. Expected useful life,

e. Annual depreciation amount per asset,

f. Accumulated depreciation per asset and reconciled to the total accumulated depreciation amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments),

g. If an asset was donated, the amount applied to Contribution in Aid of Construction per asset,

h. If donated, the accumulated amortization of the Contribution in Aid of Construction per asset and reconciled to the total accumulated amortization amount to the most recent Annual Report. (If these amounts do not match the most recent Annual Report provide detailed explanations for any needed adjustments), and

i. Projected future asset purchases for the next three years, providing the estimated acquisition date and price.

9. Copies of tax returns for the prior two complete years,

10. Information on all Notes Payable, Loans, and other Obligations, This will include all outstanding and those retired within the past two years, including:

a. Interest rate,

b. Beginning date,

c. Date of last scheduled payment (the Loan pay-off date), and

d. Amount of payment

E. Customer Notice Information

1. A copy of any notice sent to customers notifying them that the utility is seeking a rate increase.

R746-700-51. Cost of Service and Rate Design Information for a General Rate Case Application for a Water Corporation.

An applicant shall file the following Cost of Service and Rate Design information with any general rate case application.

A. A Class Cost of Service Study, if one has been prepared, based on the test period with supporting documentation including the development of allocation factors.

B. Its proposal for spreading any revenue requirement change among the rate schedules. This will include the dollar and percentage revenue requirement change for each rate schedule.

C. Its proposed rates for each rate component of each rate schedule and the billing determinants for the test period for all rate components used to calculate revenues necessary to recover the proposed revenue requirement.

D. Its proposed tariff sheets for all terms, rates, charges fees, etc. for which it proposes changes.

KEY: utilities, filings, applications, major plant additions
September 23, 2009 54-7-12(1)(b)(ii)
Notice of Continuation September 22, 2014 54-7-13.4(1)(a)(ii)

R850. School and Institutional Trust Lands, Administration.
R850-4. Application Fees and Assessments.
R850-4-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorizes the Director of the School and Institutional Trust Lands Administration to adopt rules necessary to fulfill the purposes of Title 53C.

R850-4-200. Fee Schedule.

The fees are established by the agency pursuant to policy set by the School and Institutional Trust Lands Board of Trustees. A copy of the fee schedule is available at the School and Institutional Trust Lands Administration offices listed in R850-6-200(2)(a).

R850-4-300. Fee Waivers.

1. The director may waive any fees when appropriate and when doing so would not be adverse to the interests of the beneficiaries.
2. The director shall provide a semi-annual report to the Board of Trustees of any fees waived and the reasons for waiving the fees.

KEY: administrative procedure, filing fees, rates
May 16, 2006 53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2017

R850. School and Institutional Trust Lands, Administration.
R850-5. Payments, Royalties, Audits, and Reinstatements.
R850-5-100. Authorities.

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Section 53C-1-302(1)(a)(ii) of the Utah Code entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures and rules for management of the agency.

R850-5-200. Payments.

Payments include rentals, royalties or any other financial obligation owed under the terms of a lease, permit or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of all parties to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. In order to fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in subsection 3 of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined herein by the next business day.

4. A $30 return check charge or the actual charge levied by the bank, whichever is greater, will be assessed on all checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing. If replacement funds are received after the required due date, R850-5-200(6) will be applied.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease/permit or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit or other contractual agreement will be subject to cancellation, forfeiture or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If all sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the agency may elect any of the remedies as outlined in R850-80-700(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or $30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in R850-5-300(2), within the time limit under which such payment is due.

7. Subject to R850-4-300, rental payments received after the due date which do not include a late fee may be returned to the lessee by certified mail, return receipt requested. Payment may only be accepted for the full amount due.

R850-5-300. Royalties.

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described below, may be returned and may be made subject to the penalty provisions of this rule.

i) Any report including adjustments to reporting periods more than 24 months prior to the current report period.

ii) Amendments to prior report periods creating a net adjustment of less than $10.

iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Minutes, plus 4%. However, interest will not be assessed for prior period adjustments or amendments except as provided in R850-5-300(1)(c) and for amounts of additional royalties due discovered during any audit action. Also, interest will not be accrued or billed for amounts less than $30.

R850-5-400. Audits.

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee/permittee/payor and to inspect the leased/permitted premises and conduct field audits for the purpose of determining whether there has been compliance with the rules or the terms of agreement.

R850-5-500. Reinstatements.

1. The director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the director without a written finding.

(d) Easements within 60 days of cancellation provided that:

i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to R850-30, R850-40-700(3), or R850-80 upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

KEY: administrative procedures
October 22, 2013 **53C-1-302(1)(a)(ii)**
Notice of Continuation June 27, 2017

R850. School and Institutional Trust Lands, Administration.
R850-6. Government Records Access and Management.
R850-6-100. Purposes and Authority.

1. This rule provides procedures for appropriate access to agency records.

2. This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution; and Sections 63A-12-104, 63G-2-204, 63G-2-603, 53C-1-201(3)(a)(i)(A), and 53C-2-102.

R850-6-200. Definitions.

1. Terms used in this rule are defined in Section 63G-2-103.

2. In addition:

(a) Records coordinators: individuals designated by the agency director to coordinate records access requests and to assist the public in gaining access to records maintained by the agency. Records coordinators are located in the following:

i) Salt Lake Office Public Room, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.

ii) Northern Area Office, 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818.

iii) Central Area Office, 130 N Main St, Richfield, UT 84701.

iv) Southwestern Area Office, 359 East Riverside Drive, St. George, UT 84790.

v) Southeastern Area Office, 1165 South Highway 191, Suite 5, Moab, UT 84532.

R850-6-300. Allocation of Responsibility Within the Agency.

The agency is considered a governmental entity and the director of the agency is considered the head of the government entity.

R850-6-400. Requests for Access.

1. Request for access to records shall be on a form provided by the agency or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.

2. The request shall be submitted to the records officer or coordinator. The response to the request may be delayed if not properly directed.

3. The agency shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.

4. Notwithstanding the provision of subsection 63G-2-204(1), the agency may, at its discretion, waive the requirement for a written request if the records requested are public, the records are readily accessible and the request is filled promptly by providing access or copying at the time the request is made.

R850-6-500. Other Requests.

1. For research purposes:

Access requests for private or controlled records for research purposes pursuant to Section 63G-2-202(8), shall be made in writing and directed only to the records officer.

2. To amend a record:

An individual may contest the accuracy or completeness of a document pertaining to him as maintained by the agency pursuant to Section 63G-2-603.

(a) The request to amend shall be made in writing to the records officer.

(b) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

3. To claim business confidentiality:

A request for protected records status based on a claim of business confidentiality may be made pursuant to Section 63G-2-309. Such a request shall be submitted in writing to the director or his designee. The request shall contain the claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

4. To claim limited records status:

A lessee may claim that mineral information provided to the agency should be protected under Section 53C-2-102.

(a) Such a request shall be submitted in writing to the director or his designee. The request shall contain a claim that the information provided the agency is of a proprietary nature and a concise statement of reasons supporting the claim.

(b) If the agency agrees the information is of a proprietary nature, the request shall be granted and the information shall receive limited records status until:

i) the lease is terminated and the agency believes the release of the information is not detrimental to the trust; or

ii) the lessee or its successor in interest ceases to exist as an entity and the agency believes the release of the information is not detrimental to the trust.

(c) A record granted limited records status under this section shall not be released to another party without written permission from the lessee providing the information during the period the limited records status is in effect.

(d) The agency may make information provided limited records status under this section available for inspection, but not for copying, by the Utah Geological Survey or the Division of Oil, Gas and Mining if consultation is requested by the agency, provided further that the confidentiality of such information is safeguarded.

R850-6-600. Denials.

1. If any access or status request is denied in whole or in part, a notice of denial shall be given to the requester in person or sent to the requester's address.

2. The notice of denial shall contain the information required in subsection 63G-2-205(2).

R850-6-700. Appeal of Determination.

1. Any person aggrieved by an access or status request determination including a person not a party to the agency proceeding may, within 30 days after the determination, appeal the determination to the director by submitting a notice of appeal either on a form provided by the agency or another legible written document which contains the following information: the petitioner's name, mailing address and daytime telephone number (if available); and the relief sought.

2. Upon receiving the notice of appeal and review of relevant information including that submitted with the appeal and criteria prescribed in Sections 63G-2-204, 63G-2-603, and 53C-2-102, the director may:

(a) uphold the original classification or status request determination; or,

(b) reclassify the record if he believes the original classification was incorrect; or,

(c) release the record regardless of its classification if the director believes that the interest of the public in obtaining access to the record outweighs the interest of the agency in prohibiting access to the record.

R850-6-800. Fees.

1. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the records officer or any records coordinator located at the addresses provided in R850-6-200, Definitions.

KEY: GRAMA, government documents, public records

1994 53C-1-201(3)(a)(i)(A)
Notice of Continuation June 27, 2017 53C-2-102

R850. School and Institutional Trust Lands, Administration.
R850-30. Special Use Leases.
R850-30-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to establish criteria for the leasing of trust lands.

R850-30-150. Planning.

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals to lease trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;

2. Evaluate and respond to comments received through the RDCC process; and

3. Evaluate and respond to any comments received through the request for proposal process pursuant to R850-30-310 or the solicitation process pursuant to R850-30-500(2), as applicable.

R850-30-200. Terms of Leases.

1. The agency may issue special use leases for surface uses of trust lands, excluding grazing, for terms of up to 51 years.

2. In exceptional cases, the agency may issue leases for a term of up to 99 years when it has been determined that such a term would be in the best interest of the trust beneficiaries.

3. The agency shall issue leases for the term most consistent with land management objectives found in R850-2. The term of a lease shall not normally be for a period longer than specified below for a particular lease type.

(a) Military: 10 years
(b) Agricultural: 20 years
(c) Telecommunications: 20 years
(d) Commercial: 51 years
(e) Industrial: 51 years
(f) Residential: 51 years
(g) Governmental (Other than Military): 51 years.

R850-30-300. Categories of Special Use Leases.

Special use leases are classified according to the following categories.

1. Commercial: use of trust land for a restaurant, service station, boating facilities, motels, retail businesses and similar uses may be included in this category.

2. Industrial: use of trust land for testing sites, mining or extraction facilities, manufacturing plants and similar uses may be included in this category.

3. Residential: use of trust land for a private, permanent home and legal domicile may be included in this category.

4. Agricultural: use of trust land for crop production, improved pasture lands, irrigation improvements and similar uses, excluding grazing, may be included in this category.

5. Telecommunications: use of trust land for the operation of towers and building for telecommunication purposes may be included in this category.

6. Governmental: use of trust land for water storage tanks, well sites, reservoirs, gun ranges and similar uses by a governmental agency may be included in this category.

R850-30-310. Requests for Proposals.

1. The agency may issue a request for proposals (RFP) for any lands on which the director has determined the potential for development exists.

2. A proposal submitted in response to the RFP may be for sale, lease, joint development, or exchange and shall receive protected records status until the director selects the preferred proposal.

3. Proposals may be evaluated using the following criteria:

(a) Income potential;

(b) Ability of proposed use to enhance adjacent trust lands;

(c) Proposed timetable for development;

(d) Ability of applicant to perform satisfactorily;

(e) Desirability of proposed use; and

(f) Any other criterion deemed appropriate by the director.

4. Requests for proposals shall be advertised through publication of a notice at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located as well as any other advertising methods the director determines will increase exposure of the subject property to qualified applicants. The advertisement shall indicate where a person interested in submitting a proposal may obtain an information packet.

5. Proposals shall contain a non-refundable application and review fee as specified in the RFP.

6. Applicants selected in an RFP process shall be exempt from the application process set forth in R850-30-500.

R850-30-400. Lease Rates.

1. Lease rates shall be based on the market value and income producing capability of the subject property and may be determined by:

(a) multiplying the market value of the subject property by the current agency-determined interest rate;

(b) the evaluation and use of comparable lease data; or

(c) using either a fixed rate per acre or a crop-share formula for agricultural leases providing that the rental rate is customary and reasonable.

2. The agency may base lease rentals on a value other than the market value of the subject property, provided that the director determines such is in the best interest of the beneficiaries and provided that the lease contains a clause whereby the agency may terminate the lease prior to the end of the lease term.

3. In addition to lease rental, the agency may require the payment of percentage rents.

4. The agency, pursuant to board policy, may establish a minimum lease rental based on the costs incurred in administering the leases, and a desired minimum rate of return.

5. Lease Review Procedures and Rental Adjustments for Special Use Leases.

(a) Special use leases shall be reviewed by the agency as of the effective date specified in the respective lease and such review may result in an adjustment of base rental.

(b) Adjustments in base rentals may be based upon changes in market value including appreciation of the subject properties, changes in established indices, or other methods which may be appropriate and in the best interest of the trust beneficiaries. The determination of which method to use may be based upon an analysis of the cost effectiveness of performing the review.

(c) When using established indices, the rate of adjustment shall be based on the indices established for the years involved in the review period, unless the rate of adjustment exceeds a maximum adjustment rate, or fails to reach a minimum rate of adjustment as specified in the respective lease. If no maximum adjustment rate or minimum rate of increase is specified in the lease, then the percent change will increase or decrease according to the above described rate of adjustment.

(d) The index used in the review may be the applicable component of the CPI-U or any other index determined by the agency to be appropriate.

(e) The adjusted rental amount as determined pursuant to this rule shall be rounded to the nearest number evenly divisible by 10 unless:

(i) the lease contains a fee schedule or other adjustment provisions which require a payment in an amount not evenly divisible by 10;

(ii) the lessee requests otherwise; or

(iii) the lease was acquired from the United States, Department of Interior, Bureau of Land Management, or other governmental agency and contains terms which do not allow rounding.

(f) The director may suspend, defer, or waive the adjustment of base rentals in specific instances, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.

R850-30-500. Application Procedures.

1. Applications for special use leases shall indicate the appropriate lease category, as set forth in R850-30-300.

2. Solicitation of Competing Applications.

(a) Upon acceptance by the director of a completed special use lease application, the agency shall solicit competing lease applications and, if appropriate, sales applications. The solicitation of competing applications may be waived by the director based on a written finding that the waiver is in the best interest of the trust beneficiaries.

(b) The following classes of leases are exempt from the requirements of R850-30-500(2):

i) Communication sites.

ii) Mineral and oil and gas extraction facilities when the agency does not own the mineral estate.

(c) Competing applications shall be solicited through publication of a notice at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located.

(d) Copies of the notice shall be sent by certified mail at least 30 days prior to the selection of the successful applicant to lessees/permittees of record on the subject property and adjoining landowners as shown on county records.

(e) Notices shall also be sent to the appropriate county authority in which the subject property is located with a request to have the notice posted in the local governmental administrative building or courthouses.

(f) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the parcel that does not violate the confidentiality of the initial application. The successful applicant shall bear the cost of the advertising.

(g) The agency may solicit applications on trust lands when no application has been received by advertising a parcel pursuant to the process described in R850-30-500(2) or any other means, when in the best interest of the trust beneficiaries.

R850-30-510. Preferred Application Determination.

1. At the conclusion of the advertising and notification process conducted pursuant to R850-30-500(2), the agency may select the preferred application using either of the following processes. The director shall have full discretion to select which process to use:

(a) Sealed Bid Process.

i) The agency shall allow all applicants at least 20 days from the date of the agency's mailing of notice, as evidenced by the certified mail posting receipt (Postal Service Form 3800), within which to submit a sealed bid containing a proposal to lease, purchase or exchange the subject parcel.

ii) The agency may reject those applications for which a proposal is not submitted within the prescribed time period.

iii) A sealed bid proposal for a lease shall contain the first year's rental unless such requirement is waived by the director. A sealed bid proposal for a sale shall contain funds in the amount of 10% of the offer to purchase. These deposits are refundable if the applicant is not the successful applicant or if the applicant withdraws the application prior to an agency decision.

iv) Competing proposals may be evaluated using the following criteria:

A) Income potential;

B) Ability of proposed use to enhance adjacent trust lands;

C) Proposed timetable for development;

D) Ability of applicant to perform satisfactorily;

E) Desirability of proposed use; and

F) Any other criterion deemed appropriate by the director.

b. Negotiation Process.

i) The director or his designee may invite each qualified applicant or interested person to meet with the agency and present its proposal for the use of the subject property. The director or his designee may also invite persons other than those responding to the initial solicitation to meet with the agency for the purpose of providing information or making a proposal. The director shall have full authority to:

A) offer counter-proposals;

B) negotiate with any or all of the applicants or interested persons to create a proposal which best satisfies the objectives of R850-2-200;

C) terminate the negotiation process entirely; or

D) require the applicants or interested persons to proceed through the process described in R850-30-500(2).

2. If the preferred application is for a lease, it shall be reviewed in accordance with R850-30-550. If the preferred application is for a sale, it shall be reviewed pursuant to R850-80-500. If the preferred application is for an exchange, it shall be reviewed pursuant to R850-90-200.

R850-30-550. Lease Determination Procedures.

1. The director shall not lease trust lands when such lease:

(a) would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;

(b) would create significant obstacles to future mineral development; or

(c) would foreclose future development or management options which would likely result in greater long term economic benefit.

R850-30-600. Special Use Lease Provisions.

Each lease shall contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 53C-4-202 and the following provisions: the rights of the lessee; the rights reserved to the lessor, including the right to review the lease to ensure compliance with the terms and conditions of the lease; the term of the lease; annual rentals and percentage rents, if applicable; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease; procedures of notification; transfers of lease interest by lessee; terms and conditions of lease forfeiture; and protection of the state from liability associated with the actions of the lessee on the subject property.

R850-30-800. Bonding Provisions.

1. At the time of initial lease payment, the lessee may be required to post with the agency performance, payment, and reclamation bonds in the form and amount and subject to any terms and conditions as may be determined by the agency to assure compliance with all terms and conditions of the lease.

2. The bond shall be in effect even if the lessee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided lessor first gives lessee

30 days written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah;

(b) Cash deposit. The agency shall not be responsible for any investment returns on cash deposits; or

(c) Other forms of surety as may be acceptable to the agency.

R850-30-900. Lease Assignments and Subleases.

1. Any special use lease may be assigned or subleased to any person or entity qualified to hold a lease on trust land, provided, however, that all assignments and subleases are approved by the director; and no assignment or sublease is effective until approval is given. Any assignment or sublease made without such approval is voidable at the director's option.

2. An assignment or sublease shall take effect the day of the approval of the assignment or sublease. On the effective date of any assignment or sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment shall be a sufficient legal instrument, properly executed and acknowledged, with the lease number, the land involved, and the name and address of the assignee, and the interest transferred clearly indicated.

4. Additional occupants of a telecommunication facility shall abide by all the requirements of this rule. In addition, the agency may charge each communication site sublessee an amount based on the then current market rental value of the premises, and such other factors as may reasonably bear upon the suitability of the sublessee as a tenant of the premises.

5. As a condition of the approval of an assignment or sublease the agency shall require:

(a) The assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and

(b) The assignee or sublessee to be satisfactory to the agency.

R850-30-1000. Lease Amendments.

1. Special use leases may be amended as to the following terms and conditions upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with R850-2.

(a) Purpose of the lease;

(b) Term of the lease;

(c) Rate of rental or percentage rent;

(d) Due date of rental or percentage rent; and

(e) Decrease or increase in contiguous acreage, provided that total amended acreage cannot exceed 150% of the original acreage. If the total amended acreage exceeds 150% of the original acreage, the amendment shall be advertised pursuant to R850-30-500(2).

KEY: administrative procedures, leases, trust land management, request for proposals

March 23, 2016 **53C-1-302(1)(a)(ii)**

Notice of Continuation June 27, 2017 **53C-2-201(1)(a)**

53C-4-101(1)

53C-4-202

R850. School and Institutional Trust Lands, Administration.
R850-40. Easements.
R850-40-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the director to establish rules for the issuance of easements on, through, and over trust land, and to establish price schedules for this use.

R850-40-150. Planning.

The agency shall:

1. Submit proposed easements for review by the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and

2. Evaluate and respond to comments received through the RDCC process.

R850-40-200. Easements Issued on Trust Lands.

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands if the agency determines such action would be in the best interests of the trust beneficiaries.

R850-40-250. Determination of the Status of Temporary Easements and Rights-of-Entry.

1. In order to determine the existence and continuation of any temporary easements or rights-of-entry granted pursuant to Section 72-5-203 on a specific parcel of trust land (the subject property), the agency may undertake the notification process set forth in R850-40-250(2). This evaluation does not adjudicate the status of any highway crossing the subject property that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the subject property are recognized as valid existing rights.

2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1). This notice is intended to provide information to any responsible authority wishing to assert a temporary easement or right-of-entry on the process used to file an application to make such temporary easement or right-of-entry permanent (the "application"). The application must contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

(a) Certified notice shall be mailed by the agency to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property and a map showing its location. The executive body of the county shall have 90 days from the date of the notice within which to submit an application.

(b) Notice to other responsible authorities who may have an interest in the subject property shall be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry. Other responsible authorities shall have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into an authorized easement or right-of-entry, the agency shall evaluate the request pursuant to the fiduciary responsibilities of the agency. Prior to the agency approving or rejecting an application, if any, the agency shall review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-40-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, any statutory temporary easement or right-of-entry on the subject property shall automatically be extinguished. The agency will not sell trust lands for at least 30 days after a final decision to disapprove an application to make a statutory temporary easement or right-of-entry permanent.

R850-40-300. Easement Acquisition.

1. Easements across trust lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto.

2. Easements, or other interests in trust lands, may not be acquired by:

(a) prescription,

(b) adverse possession, or

(c) any other legal doctrine except as provided by statute.

R850-40-400. Easement Charges.

The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, may be based on either the market value of the use or the market value of the land encumbered by the easement.

R850-40-500. Surveys.

1. Anyone desiring to perform a survey on trust land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the agency written notice of intent to conduct a survey of the proposed location of the easement.

2. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements.

3. The notice shall also contain an agreement to indemnify and hold the agency and any authorized lessees harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director.

4. The written notice shall be reviewed by the agency. The agency may require the applicant to obtain a right-of-entry agreement.

R850-40-600. Minimum Charges for Easements.

The agency may establish a minimum charge for an easement based on the cost incurred by the agency in administering the easement.

R850-40-700. Application Procedures.

1. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period

may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

R850-40-800. Term of Easements.

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

R850-40-900. Conveyance Documents.

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

R850-40-1000. Bonding Provisions.

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies due to the agency for costs of reclamation and compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Other forms of surety as may be acceptable to the agency.

R850-40-1100. Conflict of Use.

The agency reserves the right to issue non-exclusive easements or leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements.

R850-40-1200. Amendments.

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

R850-40-1300. Renewal of Easement.

Prior to the expiration date of any easement, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

R850-40-1400. Removal of Sand and Gravel.

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

R850-40-1500. Removal of Trees.

Forest products shall not be cut or removed from the easement unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

R850-40-1600. Easement Assignments.

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) payment is made of either:

i) the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

ii) an alternate fee established by, and at the discretion of, the director. In allowing for any alternate fee the director may consider the following factors:

A) the fee established under R850-40-1600(1)(c)(i) would create an undue financial burden upon the applicant, or

B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by the agency. Any assignment made without such approval is void.

R850-40-1700. Termination of Easement.

1. Any easement granted by the agency may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules.

2. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

R850-40-1800. Abandonment.

1. In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the

easement as provided in R850-4.

2. This administrative charge shall not be construed as rent.

3. In lieu of this charge, the agency may allow a grantee to pay a one-time negotiated charge.

KEY: natural resources, management, surveys, administrative procedures
October 22, 2009 53C-1-302
Notice of Continuation June 27, 2017 53C-2-201(1)(a)
53C-4-203

R850. School and Institutional Trust Lands, Administration.
R850-50. Range Management.
R850-50-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage, the qualifications of a grazing permittee, and related improvement of range resources on trust lands.

R850-50-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the issuance of grazing permits carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) to the extent required by the Memorandum of Understanding with the State Planning Coordinator, the agency shall submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) evaluate and respond to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by paragraph 1, above. Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in paragraph 2, above.

R850-50-200. Grazing Management.

1. Management of trust lands used for grazing purposes is based upon carrying capacity which permits optimum forage utilization and seeks to maintain or improve range conditions.

2. Carrying capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend, and climatic conditions.

3. In order to fulfil its constitutional mandate to its beneficiaries, the agency may set, and change, at its discretion, season of use, duration (time) of use, and intensity of use, as well as numbers, distribution, and kind of livestock which are allowed by a grazing permit.

R850-50-300. Applications.

1. Grazing permit applications may be accepted on all trust lands not otherwise subject to a grazing permit unless the land has been withdrawn from grazing or has been determined to be unsuitable for grazing.

2. Trust lands may be deemed unsuitable for grazing if it is determined that:

(a) range conditions render it incapable of supporting economic grazing practices;

(b) grazing would substantially interfere with another use that is better able to provide for the support of the beneficiaries; or

(c) the agency's management costs would be excessive.

3. The determination to accept grazing permit applications is at the sole discretion of the director.

R850-50-400. Permit Approval Process.

1. On trust lands that are unpermitted and which are available for grazing, applications may be solicited through any method the agency determines appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

(a) All expiring and canceled grazing permits shall be posted on the agency's website by January 1 of the year in which the permit expires or the year after the permit was canceled. The website notice shall include any reimbursable investment made by an existing permittee on a range improvement. Notice that expiring grazing permits may be found on the agency's website may also be published.

(b) Grazing permits issued on trust lands acquired through an exchange with the federal government (after the expiration of the federal permit) shall not be subject to the provisions of this rule for two successive 15-year terms unless the permit has been sold or otherwise terminated.

3. A person holding an expiring grazing permit shall have the right to renew the permit, provided that no competing applications are received, by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application must do so on forms acceptable to the agency. Forms are available at the offices listed in R850-6-200(2)(b) or from the agency's website. Applications must include:

(a) a non-refundable application fee;

(b) a one-time bonus bid; and

(c) an amount determined by the agency pursuant to R850-50-1100(7), which will be required to reimburse the holder of an authorized range improvement project should the competing application be accepted.

5. Bonus bids and range improvement reimbursements shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

6. Applications shall be evaluated by the agency and may be accepted only if the agency determines that the applicant's grazing activity will not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation, adjoining permittees and lessees, adjoining property owners, and adjoining federal permittees may be considered acceptable as competing applicants unless specific problems are demonstrated.

(b) Applicants not meeting the requirements in (a) above, whose uses would not unreasonably conflict with the uses of other permittees in the area, may nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant is able to utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) For purposes of evaluating an applicant's acceptability as a grazing permittee, the agency may consider:

(i) the applicant's ability to maintain any water rights appurtenant to the lands described in the application;

(ii) the applicant's ownership of private land in the area;

(iii) the applicant's ownership of grazing privileges in the BLM or Forest Service allotment where the trust land is located;

(iv) the type and number of livestock owned by the applicant; and

(v) management costs to the agency should the application be approved.

7. The holder of a permit which is expiring, on which a competing application has been received, shall have a preference right to permit the property provided he agrees to pay an amount equal to the highest bonus bid submitted by a competing applicant.

(a) In the event that the existing permittee fails to match the highest bonus bid, the permittee may be refunded the value of the amount the permittee contributed to the cost of any approved range improvement project at the expense of the successful bonus bid applicant.

(b) In the event that all, or a portion of, the property on

which a bonus bid was submitted is sold, exchanged, or otherwise made unavailable, the permittee shall receive the refund of a prorated amount of the bonus bid based on the AUMs lost to the use of the permittee.

R850-50-500. AUM Assessments and Annual Adjustments.

1. An annual assessment shall be charged for each AUM authorized by the agency. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

2. The annual assessment for lands designated as "High Value Grazing Lands" will be at a higher amount than trust lands not so designated. High Value Grazing Lands are typically, but not necessarily, contained in a named land block. Blocked or scattered lands may be designated as High Value Grazing Land through a Director's Finding.

3. In the event that the agency acquires High Value Grazing Lands through an exchange with the federal government, the application of the agency's annual assessment to the holders of grazing privileges on the acquired land shall be phased in over a five-year period in equal increments after the term of the federal permit has expired.

4. The application of the agency's annual assessment on lands acquired through an exchange with the federal government, and not designated as High Value Grazing Lands, shall be phased in over a three-year period in equal increments after the term of the federal permit has expired.

5. Failure to pay the annual assessment within the time prescribed shall automatically work a forfeiture and cancellation of the permit and all rights thereunder.

R850-50-600. Grazing Permit Terms.

1. Grazing permits shall be issued for a maximum of 15 years and shall contain the following:

(a) terms, conditions, and provisions that shall protect the interests of the trust beneficiaries with reference to securing the payment to the agency of all amounts owed;

(b) terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses; and

(c) other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of these rules and not inconsistent with any of its provisions.

2. The agency may cancel or suspend grazing permits, in whole or in part, after 30 days' notice by certified mail to the permittee when:

(a) a violation of the terms of the permit, or of these rules, including trespass as defined in R850-50-1400, has occurred;

(b) a lease or permit has been issued for the permitted property, the purpose of which the agency has determined to be a higher and better use;

(c) the agency has disposed of the permitted property; or

(d) any management problems arise as defined in R850-50-400(6).

R850-50-700. Reinstatements.

Trust land on which a grazing permit has been cancelled and which is ineligible for reinstatement pursuant to R850-5-500(1)(c) may be advertised as available pursuant to R850-50-400(2). If the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and all applicable fees.

R850-50-800. Grazing Permits--Legal Effect.

1. A grazing permit transfers neither right, title, or interest in any lands or resources, nor any exclusive right of possession and grants only the authorized utilization of forage.

2. Locked gates on trust land, without written approval, are prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

R850-50-900. Non-Use Provisions.

1. The granting of non-use shall be at the discretion of the agency.

2. Applications for non-use must be submitted in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency.

3. Applications for non-use must be accompanied by the application fee and by any documentation which is the basis for the request. In the event the non-use application is approved, any annual assessment paid for the year shall be applied to the permittee's next year's annual assessment.

4. Non-use shall not be approved for periods of time exceeding one year except when the director finds that a longer period of time would be in the best interests of the beneficiaries.

5. Non-use for personal convenience with no payment of the annual assessment shall not be approved.

R850-50-1000. Assignment and Subleasing of Grazing Permits.

1. Permittee shall not assign, or sublease, in whole or in part, or otherwise transfer, dispose of, or encumber any interest in a permit without the written consent of the agency. To do so shall automatically, and without notice, work the forfeiture and cancellation of the permit.

2. The approval of a sublease shall be subject to the following restrictions:

(a) An annual assessment equal to 50% of the difference between the base AUM assessment established under R850-50-500, and the AUM payment received by the permittee through the sublease, multiplied by the number of AUMs subleased, or a $1.00 per AUM minimum assessment, whichever is greater, shall be charged for the approval of any sublease.

(b) Applications to sublease a grazing permit shall only be approved after a determination that the sub-lessee meets the requirements of R850-50-400(6).

(c) Sublease approvals are valid for a maximum period of five years.

3. The approval of an assignment shall be subject to the following restrictions:

(a) A determination that the assignee meets the requirements of R850-50-400(6).

(b) A payment, based on the number of AUMs transferred multiplied by $10.00, shall be paid to the agency prior to the approval of any assignment or partial assignment. Assignments made for no consideration in money, services, or goods, to include inter vivos or testamentary assignments made to immediate family members (parents, spouse, children, grandchildren, and full siblings) and assignments from and to business entities wholly owned by an immediate family member or members, may be exempt from this additional payment. In such cases, a minimum assignment fee as listed on the Master Fee Schedule shall be assessed.

(c) For purposes of this rule, a shareholder or member of a grazing association or cooperative shall be deemed a permittee and subject to the requirements of R850-50-1000(3)(a). In order to facilitate the enforcement of this rule, each grazing association or cooperative shall submit a list of all members to the agency annually prior to June 30. This list shall include each member's contact information and the number of AUMs allowed.

4. The agency's consent to allow a mortgage agreement or collateral assignment is for the convenience of the permittee.

5. The mortgage agreement or collateral assignment shall:

(a) not exceed the remaining term of the permit; and

(b) contain an acknowledgment by the lender that the grazing permit is cancellable pursuant to R850-50-600(2) and R850-50-1000(1) and that the agency assumes no liability in providing such consent.

R850-50-1100. Range Improvement Projects.

1. Applications for range improvement projects shall be submitted for approval on appropriate forms and shall be approved or denied by the agency based on a written finding.

2. A range improvement project must be approved by the agency in writing before construction begins. Line cabins and similar structures will not be authorized as range improvement projects. They may, however, be authorized by a special use lease pursuant to R850-30.

3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only when the director finds that an extension of time would be in the best interests of the beneficiaries.

4. Range improvements constructed or placed upon trust land become the property of the agency.

5. Range improvements shall not be authorized if they would be:

(a) located on a parcel that the agency has determined has potential for sale, lease, or exchange and the possibility exists that improvements may encumber these actions;

(b) located on a parcel designated for disposal;

(c) unnecessary or uneconomical as determined by the agency; or

(d) determined by the agency to be ordinary maintenance.

6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.

7. Authorized Range Improvement Projects:

(a) shall be depreciated using schedules consistent with typical schedules published by the USDA Natural Resources Conservation Service or any other depreciation schedules approved by the board; and

(b) do not grant any vested property interest to the permittee.

8. In the event that the property, on which an approved range improvement is located is sold, exchanged, or withdrawn from use, the permittee shall receive no more than the amount the permittee contributed towards the original cost of the range improvement project, minus the indicated depreciation amount; or in the alternative, may be allowed 90 days to remove improvements pursuant to Section 53C-4-202(6).

9. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased in at 20% per year.

10. The agency may participate in the cost of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.

11. The agency's cost/share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide all necessary equipment and manpower to complete the project to specifications required by the agency.

R850-50-1200. Additional Leases.

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary conditions, it may issue an additional permit or permits. These permit(s) shall be issued in accordance to R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

R850-50-1300. Rights Reserved to the Agency.

In all grazing permits, the agency shall expressly reserve the right to:

1. issue mineral leases, special use leases, timber sales, materials permits, easements, rights-of-entry, and any other interest in the trust land;

2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment;

3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time;

4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in these rules purports to authorize trespass on private land to reach trust land;

5. require that all water rights on trust land be filed in the name of the agency and to require express written approval prior to the conveyance of water off trust land;

6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law;

7. close roads for the purpose of range or road protection, or other administrative purposes;

8. dispose of the property without compensation to the permittee, subject to R850-50-1100(7); and

9. terminate a grazing permit in order to facilitate management pursuant to R850-50-200 or for higher and better uses of trust lands.

R850-50-1400. Trespass.

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to 53C-2-301. These activities include:

(a) the use of forage at times and at places not authorized by the permit;

(b) the use of forage in excess of that authorized by the permit;

(c) grazing or trailing livestock on or across trust land without a valid permit or right-of-entry;

(d) the dumping of garbage or any other material on the trust land; and

(e) allowing another person to graze or trail livestock on the permitted property without the express written consent of the agency.

2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock to recover damages for lost forage and other damages.

R850-50-1500. Trailing Livestock Across Trust Land.

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.

2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.

3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, which shall not exceed two consecutive days, of the trailing.

R850-50-1600. Modified Grazing Permit.

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use

is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include camps, corrals, feed yards, irrigated livestock pastures, or other related uses.

2. Modified grazing permits shall be subject to the following terms and conditions:

(a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.

(b) A modified grazing permit is subject to cancellation pursuant to R850-50-600(2).

(c) The annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to R850-30-400. Periodic rental reviews may be completed pursuant to R850-30-400(5).

(d) Upon cancellation of the modified grazing permit, the permittee shall be allowed 90 days to remove any personal property.

(e) Prior to the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee may be required to post a bond with the agency in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to R850-30-800(2) through (4).

R850-50-1700. Supplemental Feeding.

1. Supplemental livestock feeding may be permitted subject to:

(a) written authorization by the agency;

(b) the designation of a specific area, length of time, number, and class of livestock; and

(c) a determination that this shall not inflict long term damage upon the property.

2. The agency may assess an additional fee for authorized supplemental feeding or may require the permittee to obtain a modified grazing permit.

3. Emergency supplemental feeding shall be allowed for ten days prior to notification.

4. The forage used for supplemental feeding shall be certified weed free.

KEY: administrative procedures, range management
January 21, 2016 **53C-1-302(1)(a)(ii)**
Notice of Continuation June 27, 2017 **53C-2-201(1)(a)**
53C-5-102

R850. School and Institutional Trust Lands, Administration.
R850-60. Cultural Resources.
R850-60-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 9-8-404, take into account the effect of trust land uses on any historic property and provide the State Historic Preservation Officer with a written evaluation of the effect of the expenditure or undertaking on the historic property. This rule also outlines the manner by which the agency shall authorize pursuant to Section 9-8-305(3)(c) surveys and excavations on trust lands.

R850-60-200. Definitions.

For purposes of this rule:

1. "Area of potential effects" means the trust lands identified by the agency within which a land use activity will take place that has the potential to cause changes in the character or use of historic properties, if any such properties exist on the surface estate of such trust lands.

2. "Discovery property" means any site or archaeological resource that is encountered, found or otherwise made known during the course of land use conducted subsequent to approval of that use by the agency.

3. "Expenditure" means use of the agency's funds for an "undertaking" as defined herein.

4. "National Register" means the National Register of Historic Places, maintained by the United States Secretary of the Interior.

5. "Undertaking" means any trust land use that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects.

R850-60-300. Authorization of Cultural Resource Work.

1. No person shall alter, remove, injure or destroy antiquities or cultural resources on trust lands, without written permission from the agency.

2. For purposes of Section 76-6-902 "consent" to alter, remove, injure or destroy antiquities or cultural resources covered by a restrictive deed covenant means either:

(a) an amendment to the certificate of sale or patent evincing the agency's release of the deed covenant; or

(b) other specific written permission and an archaeological permit issued under Section 9-8-305.

3. No person shall conduct an archaeological survey or excavate (as defined by Section 9-8-302) any cultural resources on trust lands without first obtaining a permit under Section 9-8-305 and written authorization from the agency that fulfills the requirement set forth in R850-41-500.

(a) A condition of such written authorization shall be that the principal investigator, as defined by Section 9-8-302, shall provide the agency with a copy of any records resulting from all such investigations on trust lands that are conducted under the written authorization.

(b) Non-professional documentation of the location, nature, extent and condition of cultural resources on trust lands shall also be subject to R850-60-300(3)(a).

4. A person found in violation of R850-60-300 may be subject to civil and criminal penalties under Sections 76-6-903 and 53C-2-301.

R850-60-400. Archaeological Excavation Permits.

1. Subsection 9-8-305(3)(c) allows for delegation of authority to issue excavation permits to agencies that meet specified criteria. Should the agency obtain such delegation, it shall issue excavation permits for sites on trust lands in accordance with Section 9-8-305 and Rule R694-1.

2. Applications for excavation permits shall be made on forms created and maintained by the Public Lands Policy Coordination Office and submitted to the agency in a timely manner and with enough lead time to allow for review and modification of the excavation plan or research design for the proposed investigation.

(a) The agency shall respond to an application for excavation permit in a timely manner.

(b) The agency may request information other than what is required by Section 9-8-305 and Rule R694.

3. All excavation permits shall be issued with the following requirements:

(a) The permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the agency within the time specified in the permit.

(b) Any permittee who discovers human remains shall notify the agency and other appropriate agencies pursuant to Section 76-9-704 and Rule R850-61.

(c) The agency may include other requirements as necessary.

4. Unless the proposed excavation is being conducted to facilitate execution of an expenditure or undertaking that is already the subject of Section 9-8-404 compliance, then the issuance of an excavation permit by the agency shall be considered an undertaking for purposes of Section 9-8-404.

R850-60-500. Identifying Historic Properties.

1. Following the agency's determination that a proposed trust land use constitutes an undertaking, the agency shall establish the undertaking's area of potential effects. Thereafter, the agency shall collect and review existing information about historic properties that may be located within the area of potential effects. As part of this process, the agency may seek information from the State Historic Preservation Officer (SHPO), Indian tribes, local governments, other state or federal agencies or any other interested parties likely to have knowledge or concerns about cultural resources in the area. The agency may delegate this collection of information to an appropriate person.

2. Based on this review, the agency shall make a reasonable and good faith effort to identify historic properties that might be affected by an undertaking and shall gather sufficient information to evaluate the eligibility of these properties for the National Register.

R850-60-600. Identification Responsibilities.

1. The agency may conduct cultural resource surveys on trust lands in the order of priority determined by the agency. The agency shall assign a higher priority to those cultural resource surveys for proposed uses which the agency has determined will best fulfill the trust land management objectives in R850-2-200. Agency personnel shall not normally conduct cultural resource surveys for mineral exploration or development, for easements, for surface use leases, or for projects where federal, other state or local government agencies are the applicants.

2. The director shall decide whether a cultural resource survey shall be conducted on behalf of the agency, by whom it shall be conducted, and the scope and extent to which it shall be conducted.

3. The director shall decide who will pay the cost of the cultural resource survey, when that cost shall be incurred, how much of the total cost shall be recovered, and from whom it shall be recovered. The agency may request from an applicant or interested party payment of the cost of a cultural resource

survey prior to the survey being conducted.

(a) If the party providing payment for the cultural resource survey is successful in his or her bid for the use or purchase of the trust land in question, then the agency shall not reimburse the bidder for the cost of the survey.

(b) If the party providing payment for the cultural resource survey is unsuccessful in his or her bid for the trust land in question, the agency shall reimburse that party the same amount the agency received as payment for the cultural resource survey.

R850-60-700. Evaluating Eligibility.

1. The agency shall make a determination of the eligibility for the National Register for each site identified within the undertaking's area of potential effects. The passage of time, changes in the nature of the undertaking or changing perceptions of significance may justify re-evaluation of sites that were previously determined to be eligible or ineligible for purposes of Section 9-8-404.

2. If the agency finds that either there are no historic properties present within the area of potential effects or there are historic properties present but the undertaking will have no effect on them as defined herein, the agency shall make a finding of "No Historic Properties Affected" and provide the SHPO with a written evaluation in support of that finding. If the SHPO does not reply within the time specified in Subsection 9-8-404(3)(a) or within the time period agreed to by the parties, then the agency may presume that the SHPO concurs with the agency.

3. If the agency finds that there are historic properties within the area of potential effects and the undertaking may cause changes in the character or use of historic properties, the agency shall make an assessment of effect in accordance with R850-60-800.

R850-60-800. Assessing Effects.

1. The agency shall assess the effect of a proposed trust land use or disposition on historic properties by applying the following:

(a) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(b) Examples of adverse effects. Adverse effects on historic properties include:

i) physical destruction of or damage to all or part of the property;

ii) alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation;

iii) removal of the property from its historic location;

iv) neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property; or

v) disposal of trust lands without adequate restrictions or conditions to ensure long-term preservation of the property's historic significance.

(c) Finding of no adverse effect. The agency may make a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (1)(a) of this section or the undertaking is modified or conditions are imposed to avoid adverse effects.

2. The agency shall consult the SHPO regarding the finding of effect. If the SHPO does not provide the agency with comment within the time frame set forth in Section 9-8-404, the SHPO is presumed to agree with the agency's finding of effect.

3. The director may establish treatment options in consultation with the SHPO that may include:

(a) archaeological data recovery;

(b) "alternative" or "creative" mitigation;

(c) physical treatment to alleviate or minimize the adverse effect(s);

(d) historic property documentation; or

(e) simple case documentation.

The director will make the final decision regarding any treatment options.

R850-60-900. Discoveries.

1. Upon discovering a site, a user of trust lands shall immediately cease all activities until such time as the discovery has been evaluated and treated to the director's satisfaction.

R850-60-1000. Emergency Undertakings.

The director may waive cultural resource management considerations when responding to wildland fires, flood control and other emergency actions.

R850-60-1100. Programmatic Agreements.

The agency may enter into programmatic agreements with the SHPO, or with other state or federal agencies, and with local governments for compliance with Section 9-8-404 or other pertinent state statutes. The agency may also cooperate with federal agencies in federal programmatic agreements where practicable and appropriate.

R850-60-1200. Records.

1. The agency shall submit one copy each of all site forms, survey and data recovery, treatment or mitigation reports prepared by the agency to the SHPO. All permittees preparing similar data or conducting work in accordance with R850-60-400 shall furnish two sets of the results of their work, one of which the agency will submit to the SHPO.

2. Records and data containing site location information which could jeopardize the integrity of those sites shall be provided protected records status pursuant to Subsection 63G-2-305(26).

KEY: cultural resources
January 24, 2011 **53C-1-302(1)(a)(ii)**
Notice of Continuation June 27, 2017 **53C-2-201(1)(a)**
53C-2-301
9-8-305
9-8-404

R850. School and Institutional Trust Lands, Administration.
R850-80. Sale of Trust Lands.
R850-80-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to prescribe the terms and conditions for the sale of trust land.

R850-80-150. Planning.

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals for the sale of trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;

2. Evaluate and respond to comments received through the RDCC process; and

3. Evaluate any comments received through the notice and advertising processes conducted pursuant to R850-80-600 and R850-80-615.

R850-80-200. Sale of Trust Lands.

The agency may sell trust land if the agency determines that the sale of the land would be in the best interest of the trust beneficiaries and provided that the land is sold for no less than fair market value.

R850-80-250. Evaluation of Temporary Easements, Rights-of-Entry and Existing Rights of Record.

Prior to the sale of any trust land, the agency shall undertake the notification process set forth in R850-40-250(2) to evaluate whether any temporary easement or right-of-entry exists on the subject property. The agency shall also evaluate the presence and impact of other valid existing rights of record on the subject property prior to sale, and take any appropriate steps to mitigate adverse impacts resulting from such rights.

R850-80-300. Sales Initiation Process.

The sales process shall be initiated by an agency determination to evaluate the appropriateness of the sale of a particular parcel of trust land. The evaluation shall be undertaken in accordance with R850-80-500. In determining the appropriateness of a parcel of trust land for sale, the agency may consider nominations by interested parties.

R850-80-400. Sales Deposits.

If the agency evaluates a parcel of trust land for sale due to a nomination by an interested party, the person making such nomination may be required to deposit funds in an amount determined by the agency to be used to offset costs incurred in preparing the parcel for sale. In the event the person making the deposit is the successful purchaser of such land, the deposit shall be a credit against any fees charged by the agency to the purchaser for preparing the land for sale. In the event the person making the deposit is not the successful purchaser of such land or the land is not offered for sale, the deposit shall be refunded.

R850-80-500. Sale Determination Procedures.

1. Preliminary Analysis

(a) The director shall not offer trust land for sale when:

i) the subject property is appreciating in value at a rate in excess of the anticipated return from the investment of the principle;

ii) there is no evidence of competitive market interest, unless the purpose of the sale is to test the market in a particular area;

iii) the sale would create obstacles to future mineral development on trust lands; or

iv) in the sole discretion of the director, it has been determined that the sale would foreclose future development or management options which would likely result in greater long term economic benefit.

2. Market Analysis

(a) The agency shall conduct a market analysis of a proposed sale of trust land which shall include an estimate of value. If the estimate of value is determined by an appraisal, the cost of the appraisal shall be borne by the successful purchaser.

(b) The market analysis may also include the evaluation of:

i) real estate trends;

ii) market demand;

iii) opportunity costs including potential for appreciation; and

iv) associated management costs of retention.

3. Sale Determination

(a) The director may take into account any factor and circumstances deemed relevant, as well as any applicable policy adopted by the board, when making a determination as to whether to sell trust land. Prior to the sale of trust land, the agency shall take prudent and cost-effective actions to increase the value of the land.

(b) If a sale is determined to be appropriate, the agency shall determine the minimum acceptable selling price of the subject property, which minimum acceptable selling price shall not be less than fair market value. This determination may include information from any of the following:

i) the appraisal;

ii) the data gathered pursuant to R850-80-500(2); and

iii) any other information which the agency considers relevant.

(c) The minimum acceptable selling price shall be provided protected records status until the sale is consummated, unless otherwise ordered by the director.

R850-80-550. Methods of Sale.

The agency may sell land or assets using one of the methods described below:

1. A public sale pursuant to R850-80-610, or

2. A negotiated sale pursuant to R850-80-620.

R850-80-600. Public Sale Notice and Advertising.

1. At least 30 days prior to a public sale, notice shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and

(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) the date, time, and location where the sale will be held;

(b) a general description of the subject property including township, range, and section and a brief description of the location of the subject property; and

(c) contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise public sales using any other methods the director has determined may increase the potential for additional competition at the sale.

R850-80-610. Public Sale Auctions.

Public sale auctions shall be conducted as follows:

1. Sealed bids shall be accepted until the day prior to the auction by the agency, or on the day of the auction by the officer conducting the auction.

2. A sealed bid shall contain funds in an amount equal to at least 10% of the total bid amount offered to purchase the

subject property and may be required to consist of certified funds. Bids and bid deposits shall be a specified dollar amount. The agency reserves the right to reject any bid however submitted.

3. Purchasers who have defaulted on certificates of sale may be required to make larger down-payments or submit sealed bids in the form of certified funds even if such a requirement is not contained in the notice of sale.

4. The persons submitting the three highest bids shall be allowed to enter into oral bidding, which shall begin at the amount of the highest sealed bid, subject to those terms and conditions of R850-80-610(5). Those persons who submit a sealed bid that is within 20% of the third highest sealed bid shall also be allowed to participate in oral bidding, subject to those terms and conditions of R850-80-610(5).

5. In the event the minimum selling price of a property is disclosed prior to the auction, persons who bid less than the disclosed minimum selling price shall be disqualified and shall not be eligible for oral bidding, even if such bids would otherwise meet those requirements in R850-80-610(4) or (6).

6. Only current grazing permittees, materials permittees and special use lessees on the subject property who submit sealed bids shall automatically qualify to enter into oral bidding, subject to those terms and conditions of R850-80-610(5).

7. All bids, whether sealed or oral, constitute a valid offer to purchase. An attempt to withdraw a sealed bid after the first sealed bid has been read, or an attempt to withdraw or amend an oral bid may result in the forfeiture of the bid deposit and any other remedy afforded the agency at law or equity.

8. If, after the first round of oral bidding, no bid is submitted which equals or exceeds the agency's minimum selling price, then the sale shall not be made except as provided below.

(a) At the discretion of the officer conducting the sale, qualified bidders may enter into additional rounds of oral bidding, starting at the high bid reached in the previous round.

(b) To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum selling price.

9. At the conclusion of the auction, the agency shall collect from the successful bidder:

(a) a down payment in the amount required by the sale notice;

(b) interest on the unpaid balance from the date of sale to the first day of the following month; and

(c) reimbursement of costs incurred in preparing the parcel for sale, which may include costs incurred for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

10. The first payment shall be due one year from the first day of the month following the sale; subsequent payments shall be due on the first day of the same month each year thereafter until the balance is paid in full.

11. Amounts paid in excess of the current obligations shall be applied to principal. The unpaid balance, plus interest to date, may be paid in full at any time without penalty.

12. If the successful bidder defaults on the down payment or otherwise fails to meet the requirements of R850-80-610(9), the property may, upon approval by the director, be offered for sale to the person whose bid was second highest at the auction provided that the terms of the sale shall meet or exceed the minimum acceptable selling price established for the subject property. The second highest bidder shall have 30 days from the date of the agency's offer to submit the amounts required under R850-80-610(9).

13. The interest rate which shall be charged against any unpaid balance at the conclusion of the auction shall be the prime rate, as determined by the agency on the date the public sale is approved by the director, plus 2 1/2% (Prime Rate + 2 1/2%). Interest shall be calculated on a 365-day basis. Every year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as determined by the agency on the date of billing, plus 2 1/2% (Prime Rate + 2 1/2%).

14. Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days from the date of the sale to remove the improvements. This provision is not applicable when such improvements are permitted under a valid existing right of record when such right survives the sale of the parcel.

R850-80-615. Negotiated Sale Notice and Advertising.

1. Prior to an agency decision to initiate a negotiated sale, notice of such shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and

(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) a general description of the subject property including township, range, and section and a brief description of the location of the subject property; and

(b) contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise negotiated sales using any other methods the director has determined may increase the potential for additional interest in the subject property.

R850-80-620. Negotiated Sale Procedures.

1. Negotiated sales shall be advertised in the manner set forth in R850-80-615. In the event a competing offer(s) is received, the agency shall evaluate the offers and determine what action is in the best interest of the beneficiaries.

2. The board and affected beneficiary institution(s) shall be provided notice 30 days prior to the sale describing the terms, reasons, and other pertinent facts of the proposed negotiated sale.

3. Board approval of a negotiated sale is required if:

(a) the value of the subject property exceeds $250,000.00;

(b) the subject property exceeds 320 acres in size; or

(c) additional interested person(s) indicate to the agency an interest in purchasing the subject property.

4. A purchaser of trust land sold at a negotiated sale may be required to reimburse the agency for costs incurred in preparing the parcel for sale, which may include costs for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

R850-80-700. Certificates of Sale.

1. Following a public sale or upon concurrence of the parties in a negotiated sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the subject property, and shall include:

(a) information regarding the amount paid;

(b) the amount due;

(c) the time when the principal and interest shall become due;

(d) the beneficiary of the land;

(e) provisions for remedies the agency may elect in the event of a default, as such remedies are set forth in R850-80-700(8); and

(f) any other terms, covenants, deed restrictions, or conditions which the agency considers appropriate.

2. Certificates of sale must be executed by the purchaser and returned to the agency within 30 days from the date of the

purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice shall be sent to the purchaser giving notice that after 30 days the sale may be canceled with all monies received, including the down-payment, forfeited to the agency. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate shall not be final and no rights shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to cancel a sale of trust land for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the director, and that no assignment is effective until approval is given by the director in writing.

5. An assignment of a certificate of sale shall be consistent with these rules, executed by the assignee and assignor and acknowledged, and shall clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from any obligations under the original certificate of sale.

7. Upon payment in full and surrender of the original certificate of sale for any tract of land sold, or payment in full of any amounts required under R850-80-750(3) for the partial release of property, the agency shall issue a patent to the appropriate person.

8. In the event of a purchaser's default under the certificate of sale, the agency's remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the certificate of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity.

R850-80-750. Partial Releases.

Partial release of property sold under a certificate of sale may be allowed at the discretion of the director. The following conditions shall be met:

1. Access to the remainder of the land must be preserved without restriction;

2. All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate shall have the capacity and capability to service all trust land originally included in the certificate;

3. Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the original price per acre, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of certified funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

4. Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph 3 above shall not include the 10% down payment or any annual installment paid under the certificate of sale;

5. The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released and the remaining land under the certificate; and

6. The value of the remaining land shall not be reduced to an amount less than the remaining principal balance of the certificate.

KEY: administrative procedures, sales
October 9, 2007
Notice of Continuation June 27, 2017

53C-1-302(1)(a)(ii)
53C-2-201(1)(a)
53C-4-101(1)
53C-4-102
53C-4-202(6)
63G-2-305
72-5-203(1)(a)(i)
72-5-203(2)(a)

R850. School and Institutional Trust Lands, Administration.
R850-160. Withdrawal of Trust Lands from Public Target Shooting.
R850-160-100. Authorities.

The activities of the School and Institutional Trust Lands Administration are authorized by Sections 6, 7, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and the Utah Trust Lands Management Act, Section 53C-1-101 et seq. This rule is specifically authorized by Section 53C-2-105 which authorizes the director to withdraw trust lands from public target shooting through rule enactment.

R850-160-200. Definitions.

For the purposes of this rule:

1. "Public Target Shooting" means the firing, discharging, or shooting of a firearm, bow, crossbow, or any other type of instrument designed to propel or throw projectiles or missiles.

2. "Withdrawal Area" means trust lands withdrawn from public target shooting.

R850-160-300. Exemptions.

This rule does not apply to:

1. Lawful hunting activities;

2. law enforcement activities by peace officers in the performance of their official duties;

3. discharging a firearm in the lawful defense of person or property;

4. use of the withdrawal area in conjunction with the administration or operation of a valid lease or permit; or

5. administrative use of the withdrawal area by the agency.

R850-160-400. Planning.

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals to withdraw trust lands from public target shooting to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and

2. evaluate and respond to comments received through the RDCC process.

R850-160-500. Withdrawal Process.

1. Prior to Board review of a rule that withdraws land from public target shooting, the director shall consult with:

(a) The sheriff of the county where the withdrawal area is located; and

(b) representatives from leading sports shooting organizations.

2. The director shall provide the board, for its review, the legal description of the withdrawal area and a justification statement identifying the criteria for withdrawal.

3. Each withdrawal area shall be codified as a new section under this rule and shall include a legal description of the withdrawal area.

R850-160-600. Identification of Withdrawal Area.

1. Upon codification of each withdrawal area, the agency shall:

(a) Post signs delineating the boundary of the withdrawal area; and

(b) make publicly available a map detailing the withdrawal area.

R850-160-700. Eastern Lake Mountains Withdrawal.

The following trust lands are withdrawn from public target shooting:

1. Eastern Lake Mountains, Utah County, described as: Township 7 South, Range 1 East, Salt Lake Base and Meridian, Section 6: E1/2NE1/4, NW1/4, NW1/4NE1/4, W1/2SW1/4; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 21: Lots 6, 7, 8, 9, 10, 11; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 22: S1/2 of Lot 9, NE1/4 of Lot 9, S1/2 of Lot 10; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 23: Lots 1, 2, 6, 7, 8, 9, 10, 11, 12, SE1/4NE1/4, SE1/4NE1/4NE1/4, SE1/4SW1/4NE1/4NE1/4, SE1/4NE1/4NE1/4NE1/4, SE1/4SW1/4NE1/4, SE1/4SW1/4SW1/4NE1/4, SE1/4NE1/4SW1/4NE1/4, SE1/4 of Lot 3, SE1/4SW1/4 of Lot 3, SE1/4NE1/4 of Lot 3, SE1/4 of Lot 5, SE1/4SW1/4 of Lot 5, SE1/4NE1/4 of Lot 5; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 27: E1/2NE1/4, NW1/4, NW1/4NE1/4; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 29: NE1/4NE1/4, SE1/4NE1/4, NE1/4SE1/4, N1/2SE1/4SE1/4; Containing 1,533.68 acres, more or less.

KEY: land withdrawal, public target shooting
June 21, 2017 53C-2-105

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
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;

(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; and

(g) litigation:

(i) The executive director shall advise the commission on matters under litigation.

(ii) If a settlement offer is received, the executive director shall inform the commission of the:

(A) terms of the offer; and

(B) the division's recommendations with regards to that offer.

(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;

(c) UPS 2nd Day Air A.M.;

(d) UPS Worldwide Express Plus; and

(e) 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
June 8, 2017
Notice of Continuation November 10, 2016

10-1-405
41-1a-209
52-4-207
59-1-205
59-1-207
59-1-210
59-1-301
59-1-302.1
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59-1-602
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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

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;

b) transportation costs;

c) installation charges and construction costs; and

d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.
(a) "Person" is as defined in Section 68-3-12.
(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.
(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;
(b) the address of the property; and
(c) the serial number of the property.

(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or

educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of

January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) 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.

(11) 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.

(12) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central

tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustmentsor other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b).(c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms

provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 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 exchangers;
(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;
() 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;
() 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 installation.
(iii) 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 homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2017 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

	County	Value
1)	Box Elder	799
2)	Cache	688
3)	Carbon	525
4)	Davis	853
5)	Emery	498
6)	Iron	793
7)	Kane	417
8)	Millard	788
9)	Salt Lake	711
10)	Utah	749
11)	Washington	649
12)	Weber	803

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

	County	Value
1)	Box Elder	702
2)	Cache	587
3)	Carbon	418
4)	Davis	751
5)	Duchesne	486
6)	Emery	401
7)	Grand	383
8)	Iron	695
9)	Juab	444
10)	Kane	320
11)	Millard	691
12)	Salt Lake	611
13)	Sanpete	535
14)	Sevier	562
15)	Summit	459
16)	Tooele	447
17)	Utah	648
18)	Wasatch	485
19)	Washington	553
20)	Weber	704

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

	County	Value
1)	Beaver	557
2)	Box Elder	552
3)	Cache	445
4)	Carbon	277
5)	Davis	603
6)	Duchesne	341
7)	Emery	252
8)	Garfield	210
9)	Grand	242
10)	Iron	552
11)	Juab	299
12)	Kane	177
13)	Millard	547
14)	Morgan	384
15)	Piute	332
16)	Rich	177
17)	Salt Lake	465
18)	San Juan	173
19)	Sanpete	392
20)	Sevier	418
21)	Summit	313
22)	Tooele	299
23)	Uintah	370
24)	Utah	497
25)	Wasatch	337
26)	Washington	406
27)	Wayne	328
28)	Weber	560

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

	County	Value
1)	Beaver	458
2)	Box Elder	456
3)	Cache	345
4)	Carbon	178
5)	Daggett	188
6)	Davis	504
7)	Duchesne	239

8)	Emery	156
9)	Garfield	113
10)	Grand	146
11)	Iron	451
12)	Juab	198
13)	Kane	80
14)	Millard	445
15)	Morgan	285
16)	Piute	232
17)	Rich	82
18)	Salt Lake	360
19)	San Juan	79
20)	Sanpete	295
21)	Sevier	320
22)	Summit	216
23)	Tooele	204
24)	Uintah	273
25)	Utah	399
26)	Wasatch	240
27)	Washington	306
28)	Wayne	231
29)	Weber	457

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	614
2)	Box Elder	665
3)	Cache	614
4)	Carbon	614
5)	Davis	670
6)	Duchesne	614
7)	Emery	614
8)	Garfield	614
9)	Grand	614
10)	Iron	614
11)	Juab	614
12)	Kane	614
13)	Millard	614
14)	Morgan	614
15)	Piute	614
16)	Salt Lake	614
17)	San Juan	614
18)	Sanpete	614
19)	Sevier	614
20)	Summit	614
21)	Tooele	614
22)	Uintah	614
23)	Utah	675
24)	Wasatch	614
25)	Washington	726
26)	Wayne	614
27)	Weber	670

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	235
2)	Box Elder	255
3)	Cache	264
4)	Carbon	131
5)	Daggett	156
6)	Davis	268
7)	Duchesne	166
8)	Emery	138
9)	Garfield	104
10)	Grand	133
11)	Iron	261
12)	Juab	152
13)	Kane	109
14)	Millard	193
15)	Morgan	196
16)	Piute	190
17)	Rich	105
18)	Salt Lake	228
19)	Sanpete	193
20)	Sevier	199
21)	Summit	202
22)	Tooele	186
23)	Uintah	207
24)	Utah	251
25)	Wasatch	208
26)	Washington	227
27)	Wayne	172
28)	Weber	300

(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	93
3)	Cache	118
4)	Carbon	49
5)	Davis	52
6)	Duchesne	54
7)	Garfield	48
8)	Grand	49
9)	Iron	49
10)	Juab	51
11)	Kane	48
12)	Millard	47
13)	Morgan	64
14)	Rich	48
15)	Salt Lake	54
16)	San Juan	53
17)	Sanpete	54
18)	Summit	48
19)	Tooele	52
20)	Uintah	54
21)	Utah	50
22)	Wasatch	48
23)	Washington	48
24)	Weber	78

(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	59
3)	Cache	83
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	45

(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	75
3)	Cache	70
4)	Carbon	52
5)	Daggett	52
6)	Davis	61
7)	Duchesne	69
8)	Emery	72

9)	Garfield	76
10)	Grand	78
11)	Iron	74
12)	Juab	65
13)	Kane	75
14)	Millard	76
15)	Morgan	67
16)	Piute	91
17)	Rich	65
18)	Salt Lake	70
19)	San Juan	75
20)	Sanpete	63
21)	Sevier	64
22)	Summit	72
23)	Tooele	71
24)	Uintah	80
25)	Utah	66
26)	Wasatch	53
27)	Washington	65
28)	Wayne	89
29)	Weber	70

(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	22
19)	San Juan	24
20)	Sanpete	18
21)	Sevier	18
22)	Summit	20
23)	Tooele	20
24)	Uintah	29
25)	Utah	23
26)	Wasatch	17
27)	Washington	21
28)	Wayne	29
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	13
5)	Daggett	11
6)	Davis	13
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	15
19)	San Juan	17
20)	Sanpete	13
21)	Sevier	13
22)	Summit	14
23)	Tooele	13
24)	Uintah	19
25)	Utah	14
26)	Wasatch	12
27)	Washington	13
28)	Wayne	18
29)	Weber	14

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land	
1) All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and

13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior March 1 through September 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 September 16 through the last day of February, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value

of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax

credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals
June 8, 2017 Art. XIII, Sec 2
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41-1a-301
59-1-210
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59-2-103
59-2-103.5
59-2-104
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59-2-1113
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59-2-1330
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59-2-1703

R920. Transportation, Operations, Traffic and Safety.
R920-4. Special Road Use or Event.
R920-4-1. Purpose, Authority, Scope, and Definitions of Rule.

(1) The purposes of this rule are to:

(a) Ensure the right of Utahns and visitors to speak and protest in public forums and other public places owned or maintained by the Utah Department of Transportation;

(b) Encourage and support special events such as parades, runs and walks, bicycle races, and film-related activities, recognizing their importance to Utah's economy and to the well-being of residents of and visitors to Utah;

(c) Manage limited resources and multiple requests for the use of the same roadways in a responsible and content-neutral manner;

(d) Encourage collaboration with local governments in the review and management of Special Road Uses;

(e) Provide guidelines and an appeal process for the review of applications for special road use permits; and

(f) Set reasonable time, place, and manner restrictions for the safe use of roadways for free speech events, and set reasonable requirements on other special events on highways and land under the jurisdiction of the Department to protect public safety, persons, and property, and to accommodate the interests of persons not participating in the assemblies to use the roadways for travel;

(2) This rule is intended to further the following governmental interests:

(a) The rights of Utahns to speak, protest, and peaceably assemble;

(b) The safety of all participants in, and spectators of, special events;

(c) The safety of the travelling public;

(d) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event;

(e) The management of limited resources;

(f) Utah's tourism industry and its strong economy;

(g) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

(h) The protection against unreasonable financial burdens on the Department or the State.

(3) This rule is authorized by Sections 72-1-201, 72-1-212 and 41-6a-1111 of the Utah Code Annotated. This rule applies to all highways and adjacent rights-of-way under the Department's jurisdiction.

(4) Definitions.

The following definitions shall apply for purposes of Rule 920-4:

(a) The "Applicant" means an individual, corporation, unincorporated association, Local Government, or other organization, seeking a Special Event Permit. "Applicant" also includes any predecessors or successors in interest to the Applicant, and, if the Applicant is an entity, any officers and principals of the Applicant.

(b) A "Day" means a calendar day, except as otherwise expressly stated in this Rule.

(c) "Department" means the Utah Department of Transportation.

(d) A "Free Speech Road Use" means a type of Special Road Use conducted for the purpose of persons expressing their political, social, religious, or other views protected by the First Amendment to the United States Constitution and Article I, Section 15 of the Utah Constitution during the event. A "Free Speech Road Use" does not include:

(i) Solicitations or events which primarily propose a commercial transaction;

(ii) Bicycle races or events;

(iii) Foot races, including fun-runs, races, walks, and similar events;

(iv) Motorcycle rallies, parades, and similar events; or

(v) Use of highways and adjacent rights-of-way for filming.

(e) "Local Government" means a municipality as defined in Utah Code Subsection 10-1-104(5), a county, or an institution of higher education defined in Utah Code Section 53B-2-101.

(f) A "Short-Notice Free Speech Road Use" means a type of Free Speech Road Use which arises out of, or is related to, events or other public issues which cannot be reasonably anticipated far enough in advance of the occurrence to allow compliance with the deadlines otherwise required in this Rule. An Applicant bears the burden of demonstrating that a proposed Free Speech Road Use is a Short-Notice Free Speech Road Use.

(g) A "Special Event Permit" means a permit sought or granted by the Department for a Special Road Use.

(h) A "Special Road Use" means a use or event taking place on a highway or adjacent to a highway other than normal traffic or lawful pedestrian movement.

(i) A Special Road Use includes:

(A) A demonstration, rally, vigil, picket line or similar gathering;

(B) A parade or march;

(C) A bicycle race or event;

(D) A foot race, including a fun-run, race, walk, or similar event;

(E) A motorcycle rally, parade, ride or similar event; and

(F) The use of highways and adjacent rights-of-way for filming.

(ii) A "Special Road Use" does not include:

(A) Outdoor advertising, regulated by the Protection of Highways Act, Utah Code Section 72-7-501 et seq. and Utah Admin. Code R933-2;

(B) Encroachment on, or the placement, construction, or maintenance of, roads, driveways, advertising, and utilities, regulated by Utah Code Section 72-7-701 et seq., and Utah Admin. Code R930-7; and

(C) The sole display of unattended signs or banners on or appurtenant to the roadway.

R920-4-2. Permit Required for Special Road Use; Exceptions.

(1) A Special Event Permit shall be required for any Special Road Use. A Special Road Use shall not occupy the roadway until a permit is issued. A permit shall be obtained by submitting a completed application form to the Department for the particular type of Special Road Use requested, accompanied by the fees as listed within the Department fee schedule and any other documents or attachments as required by this Rule.

(2) An Applicant shall send an application to the regional office in which the Special Road Use originates. If the Special Road Use continues through multiple Department Regions, the Department may designate a regional office to coordinate the application process throughout all other affected regions.

(3) A Special Event Permit shall not be required for activities that occur entirely on a sidewalk, crosswalk, or dedicated pedestrian passageway adjacent to or nearby a roadway so long as:

(a) Pedestrians are lawfully permitted to be present in the area;

(b) Reasonable measures are taken to ensure that the activity does not encroach upon the roadway or otherwise affect normal vehicular traffic flow; and

(c) Non-participating pedestrians have access to the sidewalk or passageway.

R920-4-3. Timeline for Submitting Applications.

(1) Subject to the requirements of this section, Applicants are encouraged to submit applications for a Special Event Permit as far in advance as is practicable to allow sufficient time for the completion of the application, for the negotiation of any conditions to the application, and for appeal, if permitted.

(2) A completed application for a Special Event Permit shall be submitted at least 30 days before the proposed Special Road Use. Any applications not received by the specified deadline may be considered by the Department if;

(a) The Applicant pays the expedited review fee as defined in R920-4-4, and

(b) There is sufficient time to process the application, to coordinate with the Applicant, and to ensure that the Applicant will comply with the terms of the permit.

(3) No application may be filed more than one year before the proposed event date.

(4) Subsection (2) does not apply to:

(a) A Special Event Permit for a Short-Notice Free Speech Road Use; or

(b) A Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

R920-4-4. Fees for Filing Applications; Exceptions.

(1) An application for a Special Event Permit shall be accompanied by the appropriate nonrefundable review fees as listed within the Department fee schedule. The fees are imposed as a regulatory measure and are charged only to defray the expenses of processing the application, reviewing for acceptability, and monitoring the event to ensure conformity with the intent expressed in Section R920-4-1 above.

(2) Any Special Event Permit not received by the deadline in subsection (2) of R920-4-3 shall be accompanied with a nonrefundable expedited review fee as listed within the Department fee schedule. Payment of the expedited fee does not guarantee that the Department will process the application.

(3) Subsection (1) does not apply to:

(a) A Special Event Permit sought by a Local Government if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) An application for a Special Event Permit for Free Speech Road Use if the Applicant demonstrates, by sufficient evidence, that the payment of the fee would affect the ability of the Applicant to provide for the necessities of life. If an Applicant is an organization, the Department may require proof that the organization's membership is similarly unable to pay.

(4) Subsection (2) does not apply to a Special Event Permit for a Short-Notice Free Speech Road Use. An application for a Special Event Permit for a Short-Notice Free Speech Road Use shall pay the nonrefundable fee specified in subsection (1), unless one of the exceptions in subsection (3) also applies.

R920-4-5. Restrictions on Special Event Permits.

(1) The Region Permit Officer shall not issue a Special Event Permit if, in the two years preceding the date of the Application:

(a) The Applicant had been granted a Special Event Permit, and the Applicant

(i) Violated a condition of the Permit, or

(ii) Failed to take reasonable care in preventing the participants in the Special Road Use from violating a condition of the permit; or

(b) The Applicant engaged in a Special Road Use without first securing a Special Event Permit.

(2) The Region Permit Officer shall not issue a Special Event Permit for Special Road Use on an overpass above a highway, if the Special Road Use is intended to draw the attention of the traffic below, and is not an incidental traversing of the overpass as part of the event path.

(3) The Region Permit Officer shall not issue a Special Event Permit for any portion of the same roadway for a period of more than 24 continuous hours, per Special Road Use.

(a) This subsection does not apply to a Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) Deviations from provisions of this subsection may be allowed if they do not violate state and federal statutes, law, or regulations, and the use will be for the public good without compromising the transportation purposes of the roadway.

(c) Requests for deviations may be considered by the Department on an individual basis, upon justification submitted by the Applicant.

(d) In determining whether to grant the deviation, the Region Permit Officer shall consider the Purposes of the Rule as articulated in Rule R920-4-1(1), The Applicant shall have the burden to prove that the deviation is in the public interest and will not substantially affect the ability of residents and others not participating in any special event to travel on the roadways and to access private property without unreasonable disruption. The Region Permit Officer may require the Applicant to provide additional proof, such as a traffic impact study, to satisfy the Applicant's burden for the deviation.

R920-4-6. Applications for Special Event Permits for Non-Free Speech Road Uses.

This section governs the standards for review of all applications for Special Event Permits other than those covered in R920-4-7.

In addition to an Application for Special Event Permit, the Region Permit Officer shall require the Applicant to provide as necessary:

(a) Insurance coverage, waiver and release of damages and indemnification as described in R920-4-9;

(b) A traffic control plan as described in R920-4-10;

(c) Public notification as described in R920-4-11;

(d) A contingency plan, as described in R920-4-12;

(e) A route map as described in R920-4-13; and

(f) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

(2) In reviewing any Application for Special Event Permit, the Region Permit Officer may place reasonable restrictions on the Special Road Use. Except as provided by R920-4-5(1), no such restriction shall be based on the identity of the applicant or of persons expected to participate in the Special Road Use. The restrictions include, but are not limited to:

(a) A limitation of the total time the permittee may occupy a particular portion of roadway;

(b) A limitation on the particular time of day the permittee may occupy the roadway;

(c) A limitation on the number of lanes the permittee may occupy on the roadway;

(d) A limitation on the number or size of banners or signs any participants may carry on the roadway; and

(e) A prohibition on the use of a particular roadway and the requirement of an alternate route.

(3) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing restrictions on the Special Road Use, the Region Permit Officer shall consider:

(a) The annual number of other Special Use events scheduled on the roadway;

(b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

(c) The nature of the roadway requested for use, and the

volume of traffic normally occupying the roadway at the requested time of use;

(d) The amount of time requested for use;

(e) The safety of all participants in special events;

(f) The safety of the travelling public;

(g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and

(h) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

(i) The overall economic impact on nearby businesses and the traveling public resulting from the Special Road Use.

(4) Applications for Special Event Permits governed by this section shall be processed. If the Region Permit Officer determines the application is incomplete, he or she shall notify the Applicant with a notice of incomplete application once the deficiency is discovered.

(5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application:

(a) Within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

(b) In the case of an application submitted along with an expedited fee, within three business days of its receipt as complete.

R920-4-7. Review of Applications for Special Event Permits for Free Speech Road Uses.

This section governs the standards for review of applications for Special Event Permits for Free Speech Road Uses.

(1) In addition to any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer shall require the Applicant to provide, as necessary:

(a) A traffic control plan as described in R920-4-10;

(b) Public notification as described in R920-4-11;

(c) A contingency plan, as described in R920-4-12;

(d) A route map as described in R920-4-13; and

(e) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

(2) In reviewing any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer may place reasonable time, place, and manner restrictions on the Free Speech Road Use. No such restriction shall be based on the content of the beliefs expressed or anticipated to be expressed during the Free Speech Road Use, or on factors such as the identity or appearance of persons expected to participate in the assembly.

(3) In placing reasonable time, place, and manner restrictions on the Special Road Use, the Region Permit Officer shall consider:

(a) The annual number of other Special Use events scheduled on the roadway;

(b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

(c) The nature of the roadway requested for use, and the volume of traffic normally occupying the roadway at the requested time of use;

(d) The amount of time requested for use;

(e) The safety of all participants in special events;

(f) The safety of the travelling public;

(g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and

(h) The ability of residents and others not participating in any special event, to travel on the roadways and to access other public and private property without unreasonable disruption.

(4) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing time, place, or manner restrictions on a Free Speech Road Use, the Region Permit Officer shall select restrictions that are tailored to address any identified risks of harm or other articulated governmental interests. The restrictions include, but are not limited to:

(a) A limitation of the total time the permittee may occupy a particular portion of roadway;

(b) A limitation on the particular time of day the permittee may occupy the roadway;

(c) A limitation on the number of lanes the permittee may occupy on the roadway;

(d) A limitation on the number or size of banners or signs any participants may carry on the roadway;

(e) A prohibition on the use of a particular roadway and the requirement of an alternate route, where other restrictions will not protect the governmental interests affected by the Free Speech Road Use, and ample alternatives for speech exist.

(5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

(6) Applications for Special Event Permit for a Short-Notice Free Speech Road Use shall be processed on an expedited basis, and the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the application within three business days of its receipt as complete.

R920-4-8. Special Use Double Booking Conflict Resolution.

(1) In cases where a double booking conflict arises, the Department will encourage any secondary, or subsequent, Applicant to review the feasibility of collocating with the original Applicant. If collocating proves impracticable, the Department will encourage any secondary, or subsequent, Applicant to offer a viable alternative strategy that meets the needs of all Applicants, while also ensuring adequate public safety measures remain intact.

(2) For non-Free Speech Special Road Uses, the Department may also rely on local agency assistance with establishing special event permitting priorities and reserves the authority to exercise the discretion in giving priority consideration to an applicant based on an evaluation of historic use, potential economic benefit, and other relevant factors.

(3) In cases where none of the aforementioned conflict resolution strategies prove effective in remedying a continuing dispute between multiple applicants, and the Department determines that collocating is impracticable, the Special Event Permit will be issued based on the earliest recorded application time and date where the Department has determined the Applicant has fully completed all application requirements.

R920-4-9. Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements.

(1) The Applicant for a Special Event Permit governed by R920-4-7 shall obtain and provide proof of liability insurance at time of application naming the "State of Utah, the Department and its Employees" as an additional insured under the certificate, with a minimum $1,000,000 coverage per occurrence and $3,000,000 in aggregate. The name of the insured on the insurance policy and the name of the Applicant shall be identical.

(2) The Applicant may fulfill the requirements of Subsection (1) by providing

(a) Sufficient proof that the Applicant has secured liability

insurance for the event required by another governmental entity which meets the minimum coverage requirements contained in Subsection (1), and

(b) The Applicant has included the "State of Utah, the Department of Transportation, and its Employees" as an additional insured on the policy.

(3) The Applicant shall complete the appropriate "Waiver and Release of Damages" and "Indemnification" forms prior to permit issuance. All event participants shall also complete the "Waiver and Release of Damages" form prior to participating in the permitted event.

(4) The Applicant is responsible for ensuring each participant completes the "Waiver and Release of Damages" form prior to participating in the event. The originating Applicant is the custodian of all signed participant waivers, as specified in subsection (3), and shall produce these upon demand for inspection and review by the Department at any time within 12 months after the completion of the event.

R920-4-10. Traffic Control Requirements and Considerations.

(1) All traffic control is the responsibility of the Applicant. A traffic control plan, in accordance with R920-1, R930-6 and Department Standard and Supplemental Drawings, shall be provided to, and approved by, the Region Traffic Engineer, or other authorized Department designee. If the Region Traffic Engineer deems it necessary, considering the nature of the Applicant's Special Road Use and the proposed event path, the Applicant may be required to perform and provide a traffic impact study for the Special Road Use.

(2) Road closures will require appropriate traffic control. Appropriate traffic control may include by uniformed state, county, or local peace officers, or a private company, identified event staff, or physical devices, as determined by the Department.

(3) The Region Permit Officer may require an alternate route, or alternative time, if the proposed Special Road Use occurs when traffic volumes are high, active road construction is present, an alternate event is already occupying the road, a safer route can accommodate the event, or the event poses a significant inconvenience to the traveling public.

(4) All railroad crossings and bridges shall be given special attention. The Applicant shall coordinate with the appropriate railroad representatives to ensure the event schedule does not conflict with the operation of the railroad.

(5) The Applicant shall restore the particular road segment to its original condition, free from litter and, other material changes.

(6) The Department may monitor and ensure compliance with the terms and conditions of any Special Event Permit, and require the Applicant to pay a monitoring and compliance fee at the rates authorized within the Department's fee schedule.

R920-4-11. Public Notification Requirements.

(1) As determined by the Region Permit Officer, the Applicant may be required to provide advance notification to the general public regarding the Special Road Use, depending on the nature of the roadway being used, the time of day of the use, and the impact on the non-participating travelling public and adjacent businesses.

(2) The Region Permit Officer may require the Applicant to inform the general public about the date, time, affected roads, traffic impacts, an estimate of the anticipated length of delay, and other information necessary to provide reasonable notice to the public of the Special Road Use. The methods of notification may include:

(a) A news release distributed to all local radio stations, television stations, and newspapers that announce the event and advise residents of alternate routes and potential delays.

(b) The posting of signs, including variable message signs, along the Special Road Use route for a reasonable period of time prior to the event;

(c) Attempts by the Applicant to personally contact residents and businesses along the Special Road Use route;

(d) The retention of a dedicated agent or public relations firm to maximize the distribution of the message.

(3) Any signs required to be posted pursuant to this rule, including any variable message signs, shall not advertise the event itself or any private products or services.

R920-4-12. Contingency Plan and Participant Notification Requirements.

(1) Considering the nature of the planned Special Road Use, the Applicant shall develop:

(a) Contingency or emergency plans,

(b) Planned rest areas, water facilities, and trash cleanup, and

(c) Plans to ensure that participants obey the conditions of the Special Event Permit and all other generally applicable traffic laws, lights, and signs.

(d) The Region Permit Officer may require that the Applicant provide notice to participants, bystanders, or the public of all plans enumerated in subsection (1) of this Rule. The amount of and method of notice shall be dependent on the circumstances of the Special Road Use.

R920-4-13. Event Route Identification and Private Property Use Requirements.

The Applicant shall provide a detailed map showing the proposed course and direction of the event. Locations of parking areas, water stations, toilet facilities, and other appropriate information shall also be included on the map if deemed necessary by the Region Permit Officer. These areas cannot be located within the state right-of-way. The applicant is responsible for obtaining appropriate permission to locate these facilities on private property.

R920-4-14. Adherence to Municipal, County, or other Governmental Agency Permitting Requirements.

The Applicant shall procure any applicable city, county, or other governmental agency approvals or permits.

R920-4-15. Appeal.

(1) An Applicant may appeal the following determinations of a Region Permit Officer:

(a) Any denial of a Special Event Permit;

(b) A denial of a deviation request as described in Rule R920-4-5(3)(b);

(c) A determination that a proposed Special Road Use is not a Free Speech Road Use or Short-Notice Free Speech Road Use; and

(d) Any time, place, or manner restriction placed on a Special Event Permit for a Free Speech Road Use that the Applicant believes is unreasonable or illegal.

(2) The following process shall be used for an appeal:

(a) An Applicant may appeal the determinations described in subsection (1) decision to the Department's Program Development Director,

(b) Any appeal to the Department's Program Development Director shall be in writing and shall include:

(i) A statement of the basis for the objection,

(ii) Any supporting documents to be used in the appeal, and

(iii) A copy of any written decision issued by the Region Permit Officer.

(c) The Department's Program Development Director shall make a decision on appeal, based on the written submissions of the Applicant, and the Department's file.

(d) The Department's Program Development Director shall concur with, modify, or overrule the decision of the Region Permit Officer. The decision shall be in writing and shall explain the reasons for the decision.

(3) Appeals shall be resolved within the following timelines:

(a) For appeals brought under subsections (1)(c) or (d), the Department's Program Development Director shall issue a decision as soon as reasonably practicable, but no later than three business days after the Department's Program Development Director receives the written appeal.

(b) For all other appeals, the Department's Program Development Director shall issue a decision no later than 14 days prior to the planned date of the Special Road Use, or within 30 days after the appeal has been lodged, whichever is later.

KEY: parades, permits, road races, special events
January 7, 2016 41-6a-1111
Notice of Continuation June 8, 2017 41-22-15
72-1-201
72-1-212

R926. Transportation, Program Development.
R926-2. Evaluation of Proposed Additions to or Deletions from the State Highway System.
R926-2-1. Authority.

This rule establishes the procedure by which highways shall be considered for the addition to or deletion from the state highway system as required by Utah Code Ann. Section 72-4-102.

R926-2-2. Purpose.

Using the criteria for state highways as provided in Section 72-4-102.5, the department will determine whether to recommend the addition of or deletion from the state highway system a roadway or segment of roadway. The purpose of this rule is to establish the following:

(1) A process for a highway authority to propose additions to or deletions from the state highway system, and

(2) A procedure for evaluating requested additions to or deletions from the state highway system.

R926-2-3. Definitions.

(1) "Commission" means the Utah Transportation Commission;

(2) "Department" means the Utah Department of Transportation;

(3) "Local Highway Authority" means the local political subdivision, such as town, city or county responsible for the highway system in that jurisdiction;

(4) "Transfer" means the process of adding or deleting a segment of roadway from one government's highway system to or from another government's highway system;

R926-2-4. Notifications.

The following notifications shall be made regarding the Transfer of highways.

(1) The Department will notify the local highway authorities of its intent to collect proposed changes to the state system annually.

(2) The Department will ensure an affected local highway authority is notified of any transfer under consideration by the Commission at an open public meeting.

(3) As provided in 72-4-102(4)(a), the Commission or the Department shall, no later than November 1 of each year, notify and provide to the Transportation Interim Committee of the Legislature:

(a) a list of the highways recommended for Transfer;

(b) a list of potential Transfers that are currently under consideration; and

(c) a list of Transfers that were proposed but not agreed to by the Department or Local Highway Authority.

R926-2-5. Procedure for Requesting an Addition to or a Deletion from the State Highway System.

A request for the addition to or deletion of a highway from the state highway system shall be made by the Local Highway Authority currently responsible for the highway, a member of the Utah Transportation Commission or the Utah Department of Transportation. The request shall be conveyed to the Utah Department of Transportation and will be directed to the region director responsible for the area where the highway is primarily located.

R926-2-6. Procedure for Evaluating Proposed Changes to the State System.

The procedure for evaluating proposed changes to the state highway system is as follows:

(1) The Region Director shall:

(a) notify all impacted local government agencies of the proposed change;

(b) make a preliminary review of the proposed change that may include but not be limited to:

(i) determine of what, if any funding will accompany the road Transfer;

(ii) determine of what, if any, physical improvements may be necessary on the roadway before the Transfer is completed;

(iii) secure a written statement from the Local Highway Authority regarding the proposed Transfer;

(iv) make a judgment as to which highway authority has the best operational abilities for maintenance and construction activities on the proposed route; and

(v) determine if the highway continuity and the efficiency of state highway system operation and maintenance activities is impacted by the proposed change.

(c) forward the proposed Transfer along with the results of the preliminary review to the Program DevelopmentDirector; and

(d) present and discuss potential road Transfers at the regularly scheduled monthly Transportation Commission meetings.

(2) The Program Development Director shall review the request from the region director and shall:

(a) determine if the proposed Transfer meets the criteria in Utah Code Section 72-4-102.5 to qualify for inclusion on the state highway system and is consistent with statewide practice;

(b) with the Director of Program Financing, identify the source of funds, if any, proposed to accompany the Transfer; and

(c) shall present the evaluation to the Commission with a recommendation whether the route qualifies for inclusion on the state highway system and any proposed funding considerations;

(3) The Commission shall review the recommendation and shall:

(a) consider the proposed Transfer at a public meeting where the affected local officials are invited to discuss and comment on the proposed change;

(b) discuss any funding considerations and the circumstances under which the proposed Transfer will take place;

(c) take into account any other factors considered appropriate in consultation with the Department and Local Highway Authority impacted;

(d) approve or reject the proposed change in the state highway system;

(e) if it approves the Transfer, make the required changes to the state highway system by resolution; and

(f) report to the Transportation Interim Committee of the Legislature as detailed in Subsection 926-2-4(3).

(4) The Commission may continue to process proposed Transfers that are currently under consideration by using the same notification and evaluation criteria as presented in this rule.

(5) As provided in 72-4-102, the State Legislature must approve additions to or deletions from the state highway system.

KEY: transportation planning, highway planning, highways, transportation
June 30, 2017 72-4-102.5
Notice of Continuation September 8, 2016

R930. Transportation, Preconstruction.
R930-9. Detection and Elimination of Unauthorized Discharges into Drainage Systems, Enforcement of Water Laws, Sanctions for Violation, and Permitting.
R930-9-1. Rulemaking Authority.

The Department promulgates this rule pursuant to Utah Code Subsection 63G-3-201(2)(a), Section 72-1-201, Section 72-7-102, and Section 72-7-104.

R930-9-2. Detecting Discharges into Drainage Systems.

The Department has the authority to detect, investigate, eliminate, and enforce against any non-stormwater discharge (including illegal dumping) to its drainage systems and within its right-of-way. The Department also has the authority to create an effective regulatory mechanism to implement actions that meet the requirements of the Department's Utah Pollutant Discharge Elimination System ("UPDES") Municipal Separate Storm Sewer System ("MS4") Permit.

R930-9-3. Regulatory Mechanism to Meet the Requirements of the Department's UPDES MS4 Permit.

The Department will act to enforce the requirements of its UPDES MS4 permit.

R930-9-4. Connections to Drainage Systems, Permitting, Fees.

(1) The Department has the authority to require compensation from a local government or property owner to connect to drainage systems located within Department right-of-way.

(2) The Department may recover the costs of managing a local government or property owners' connection to drainage systems located within Department right-of-way.

(3) The Department may issue and require the local government or property owner to obtain a permit to connect to a drainage system located within Department right-of-way. The primary purpose of the drainage system is for the management of stormwater runoff from the Department's right-of-way. Drainage flows from offsite areas must not exceed the capacity of the drainage system or interfere with the Department's ability to use its drainage system. The Department has the discretion to deny requested connections to its drainage systems. If the application is complete and a connection is permitted, the Department will either enter into an agreement with the local government or the property owner shall sign the Department's drainage agreement.

(4)(a) The local government or property owner will be responsible for all costs associated with clean-up necessary or any imposed fines or penalties due to non-stormwater discharges into the Department's drainage system regardless if a connection has been permitted.

(b) If the local government or property owner fails to take measures to prevent non-stormwater discharges, the Department will require the connection to be removed from the Department's drainage system.

(5) The Department may require the local government or property owner seeking to connect to a Department drainage system to provide a surety bond sufficient to protect the Department from harm to its drainage system caused in whole or part by work performed on or substances discharging from a local government's system.

(6) The Department may adopt a fee schedule that indicates required dollar amounts for surety bonds required of various types of utility services or for property owners seeking permits to connect to a Department drainage system.

(7) The Department may adopt a fee schedule covering connection, permit, and management fees it charges local governments and property owners and will make it publicly available.

(8) Fees collected by the Department under this rule shall be deposited with the state treasurer and credited to the Transportation Fund.

R930-9-5. Enforcement.

(1) When the Department learns that a local government or property owner has installed, placed, constructed, altered, repaired, or maintained a drainage pipe, inlet or manhole, ditch, culvert or any other structure or object of any kind within Department right-of-way without the Department's without complying with the requirements of Utah Code Title 72, the Department may:

(a) Remove the installation from the right-of-way immediately as circumstances dictate; or

(b) Give written notice to the local government or property owner to remove the installation from the Department's right-of-way.

(2) Notice under Subsection (1)(b) may be served by:

(a) Personal service; or

(b)(i) Mailing the notice to the person, firm, or corporation by certified mail the last known address; and

(ii) Posting a copy on the installation for 10 days.

(3) If the installation is not removed within 10 days after the notice is served, the Department may remove the installation at the expense of the local government or property owner.

(4) The Department may recover the costs and expenses incurred in removing the installation, serving notice, and the costs of a lawsuit.

(5)(a) If the local government or property owner disputes or denies the existence, placement, construction, or maintenance of the installation, or refuses to remove or permit its removal, the Department may bring an action to remove the installation.

(b) If the Department is granted a judgment by a court the highway authority may recover the costs of removing the installation as provided in Subsection (4).

R930-9-6. Referrals to the Attorney General.

The Department will refer matters related to enforcing this rule to the attorney general.

KEY: storm water, tie-ins, UPDES MS4, illicit discharge
June 30, 2017 63G-3-201(2)(a)
72-1-201
72-7-102
72-7-104

R982. Workforce Services, Administration.
R982-402. Energy Assistance Programs Standards.
R982-402-1. Opening and Closing Dates for HEAT Program.

(1) Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.

(2) The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. If federal LIHEAP funds are yet available, the program may be extended beyond April 30 and through to September 30 with the approval of the State HEAT Program Manager. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

R982-402-2. U.S. Residence.

(1) To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:

(a) Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.

(b) Be lawfully admitted into the US for permanent residence as evidenced by a valid U. S. Citizenship and Immigration Services (USCIS) Permanent Resident Card (form I-551).

(c) Be lawfully admitted into the US with a valid USCIS Employment Authorization Card (form I-766) with one of the following categories: A3, A4, A5, A10, C11, C25, RE1, RE2, RE3, RE4, RE5.

(d) Be lawfully admitted into the US with a valid USCIS Arrival/Departure Record (Form I-94) with a Customs and Border Protection endorsement stamp marked with one of the following: I-551, 203A7, 207, 208, 212D5, RE1, RE2, RE3, RE4, RE5.

(e) Be lawfully admitted into the US with a valid USCIS Approval Notice (Form I-797A) issued with one of the following classes: I-551, 203A7, 207, 208, or 212D5, RE1, RE2, RE3, RE4, RE5.

(2) Persons not eligible to participate in the HEAT program are:

(a) Persons who hold a USCIS 1-94 who are admitted as temporary entrants.

(b) Persons who have none of the documents listed in subsection 1 of this section or whose documents are expired.

R982-402-3. Utah Residence.

There is no length of residency requirement. Individuals must be living in Utah voluntarily and not for a temporary purpose.

R982-402-4. Local Residence.

(1) Native American Residents of Daggett, Duchesne, and Uintah Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

(2) Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

(3) Residents living on the Navajo Indian Reservation in San Juan County may apply for utility assistance through the Navajo Tribe or through the State HEAT Program. They cannot receive assistance through both programs in the same program year.

R982-402-5. Vulnerability.

(1) Households that are responsible for paying home heating costs are considered vulnerable.

(2) The following households are considered responsible for home heating costs:

(a) Households who are presently paying heating costs directly to energy suppliers on currently active accounts.

(b) Households who are currently paying energy costs indirectly through rent.

(3) Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:

(a) Nursing homes;

(b) Hospitals;

(c) Prisons and jails;

(d) Institutions;

(e) Alcoholism and drug treatment centers;

(f) Group homes administered under a contract with a government agency or administered by a government agency;

(g) Households not connected to a heat source;

(h) Households whose utility bills are paid regularly by an outside party;

(i) Automobiles;

(j) Tents.

R982-402-7. Social Security Numbers.

(1) Verification of Social Security Numbers is required for all household members.

(2) There are four ways to provide a correct SSN. The client can submit one of these three documents.

(a) An official SSN card

(b) Official documents from Social Security Administration including award letters, benefit checks or a Medicare card

(c) An SSA receipt form 5028 or 2880.

(d) Official document from another government agency.

R982-402-8. Eligible HEAT Household.

(1) Household members need not be related.

(2) Multiple dwellings including duplexes and apartment buildings are considered separate households.

(3) If the HEAT benefit, combined with other available funds, will not prevent shut-off, or reconnect a utility that has already been disconnected, the household will be denied.

R982-402-9. Age and Emancipation.

Household members 18 years of age or older or emancipated are considered adults. A child can be emancipated by age, marriage or court order.

R982-402-10. Weatherization Referrals.

Participation in the weatherization program is not a condition of eligibility for HEAT.

R982-402-11. HEAT Crisis Assistance.

(1) A crisis exists when a household faces a sudden or unexpected event beyond its control resulting in the inability to pay household heating costs. A crisis may be caused by:

(a) unexpected increase in medical costs;

(b) sudden loss of job, public benefits, or other income;

(c) malfunction of heating equipment;

(d) other circumstances that may pose a potential health and/or safety threat

(2) Circumstances that do not necessarily qualify as a crisis include:

(a) chronic non-payment of utility/fuel costs

(b) unexplained or excessively high utility/fuel costs

(c) payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a

collection agency or capital improvements to rental property

(d) other situations which are not sudden, unexpected, or beyond the control of the household.

(3) To be eligible for HEAT crisis assistance, a household must be eligible for HEAT during the same HEAT program year.

(a) If the local office determines that a household is in a crisis situation, is eligible to receive HEAT crisis assistance and has written notice from the Division of Public Utilities that the residence has "life supporting equipment", HEAT crisis assistance will be provided within 18 hours. Regular HEAT crisis assistance will be provided within 48 hours of eligibility determination.

(b) The HEAT supervisor or designee must approve all expenditures.

(c) HEAT payments are issued to the vendor. If propane or wood is used as a heating source, or if the state does not have a contract with the vendor, the percentage of benefit attributable to that heating source can be paid directly to the client.

(d) HEAT crisis payments are limited to a maximum of $500 per household per utility (e.g. gas and electric) per HEAT program year unless prior approval for an amount larger than $500 per utility is obtained from the supervisor or state office.

R982-402-12. Supplemental Programs.

Households that qualify for HEAT assistance may also receive supplemental payments from other utility programs, such as "Reach", "Lend-A-Hand", and Catholic Community Services utility fund.

R982-402-13. Security Deposits.

(1) A PSC regulated utility is required to waive the security deposit requirement for all Heat and Moratorium clients during the period of the Moratorium. Monies received by a regulated utility from third-party sources, including monies provided by HEAT, REACH, CONCERN or similar programs, shall not be applied to the security deposit.

(2) If the company has signed a HEAT contract, the company has agreed not to charge a security deposit to a HEAT client from November 15th through March 15th. This does not apply to the service initiation fees that are routinely charged as a condition of service.

R982-402-14. Consumer Complaints.

(1) Consumer complaints against a PSC regulated utility should be referred to the Public Service Commission.

(2) Consumer complaints against a non regulated utility should be referred directly to the individual utility company.

R982-402-15. Credit Balances on Utility Accounts.

(1) If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.

(2) Utility companies may refund credit balances to clients who still reside in Utah if a new Utah address is provided within 30 days after termination of service. Otherwise, the credit balance shall be refunded to the HEAT Program.

(3) In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.

(4) If the client fails to give the disconnecting utility company the information necessary to transfer or refund the credit balance, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.

(5) Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

KEY: energy assistance, residency requirements, opening and closing dates, HEAT
August 11, 2015 35A-8-1403
Notice of Continuation June 28, 2017

R982. Workforce Services, Administration.

R982-403. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.

R982-403-1. Energy Assistance Income Standards.

For HEAT assistance cases, the local HEAT office shall determine the countable income of the household. Income must be at or below 150% of the federal poverty level to qualify for HEAT assistance.

R982-403-2. Countable Income.

Countable income is gross income minus exclusions, disregards, and deductions.

R982-403-3. Unearned Income.

(1) Countable unearned income is cash received by an individual for which no service is performed.

(2) Sources of unearned income include the following:

(a) Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;

(b) Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;

(c) Unemployment Compensation;

(d) Strike or union benefits;

(e) Veteran's benefits;

(f) Child support and alimony;

(g) Veteran's Educational Assistance intended for family members;

(h) Trust payments, withdrawals, and/or dividends received on a regular basis;

(i) Tribal fund gratuities unless excluded by law.

(j) Money from sales contracts and mortgages;

(k) Personal injury settlements;

(l) Financial payments made by the Department of Workforce Services;

(m) Income from Rental Property. If the client also manages the property, the income is earned;

(n) Temporary Assistance to Needy Families (TANF);

(o) Emergency Work Program (EWP);

(p) Work allowances;

(q) Foster Care Payments;

(r) Severance pay paid out weekly;

(s) 401K payments;

(t) Retirement income;

(u) Payments received or drawn down from assets like a reverse mortgage or withdrawals from accounts;

(v) Gifts received, or payments made on a client's behalf on a regular basis.

R982-403-4. Earned Income.

(1) Earned income is income in cash or in kind received by an individual for which a service is performed.

(2) Sources of earned income include the following:

(a) Wages, including military base pay;

(b) Salaries;

(c) Commissions;

(d) Rent amount, when client works in return for rent;

(e) Monies from self-employment including baby-sitting;

(f) Tips;

(g) Sale of livestock and poultry;

(h) Work Study;

(i) Military payments to cover Basic Allowance for Quarters and Basic Allowance for Substance;

(j) Money the employee chooses to have withheld for benefit plans including Flex Plans and Cafeteria Plans;

(k) Income from rental property if client also manages the property.

R982-403-5. Income Exclusions.

The income listed below is not counted when determining eligibility:

(1) Earned income of an unemancipated household member;

(2) Cash over which the household has no direct control;

(3) Reimbursements for expenses directly related to employment, training, schooling, and volunteer activities;

(4) Reimbursements for incurred medical expenses;

(5) Bona fide loans. A bone fide loan is a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(6) Compensation paid to individual volunteers under the Retired Senior Volunteers Program, Green Thumb and the Foster Grandparent Program;

(7) Incentive and training expenses paid by the HEAT Self Sufficiency program.

(8) Earned Income Tax Credit;

(9) Financial payments from Workforce Innovation and Opportunity Act;

(10) Value of SNAP;

(11) Educational loans, grants, scholarships or college work study with the exception of Veterans Educational Assistance intended for the family members of the student. The student's portion is exempt;

(12) Interest or dividend income;

(13) Compensation or reimbursement paid to Volunteers In Service To America, Senior Health Aides, Senior Core of Retired Executives, Senior Companions and ACE;

(14) Church cash assistance and voluntary cash contributions by others unless received on a regular basis;

(15) Rental subsidies and relocation assistance;

(15) Utility subsidies;

(16) The full military pay for an active duty soildier not in the home. However, any amount taken out of his or her military pay and sent home for the family's support is counted; and

(17) Any funds, payments, or tribal benefits required by Public Law 98-64, Public Law 93-134(7), Public Law 92-254, Public Law 94-540, Public Law 94-114 and Public Law 96-240(9); Public Law 92-203, Public Law 101-201 or Public Law 101-239(10405), Public Law 100-383, Public Law 101-426, or by Public Law 100-707.

R982-403-6. Income Disregard.

(1) 20% of earned income, including self-employment earned income, will be disregarded. "Disregard" means a portion of income that is not counted.

(2) For self-employed households the cost of doing business will be deducted. The 20% disregard will be applied to the remainder.

R982-403-7. Income Deductions.

(1) A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

(a) The client must verify the payment was made directly to a medical provider by a member of the household, for a member of the household in the month prior to the month of application and that they will not be reimbursed by a third party.

(b) Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

(2) A deduction for child support and alimony payments will be allowed when those payments were actually made by a member of the household during the same time period as the income being counted.

(a) The client must verify the payment was actually made directly to the custodial adult or through the court.

(b) Payments in lieu of child support and alimony,

including car payments or mortgage payments, are deductible.

R982-403-8. Self-Employment Income.

(1) A self-employed person is someone who earns income directly from his or her own business, trade, or profession.

(2) Self-employment income will be determined by using the previous year's tax return or as follows:

(a) All gross self-employment income is counted, including capital gains. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.

(b) The cost of doing business will be deducted.

(i) Allowable business costs include:

(A) labor;

(B) stock;

(C) raw materials;

(D) seed and fertilizer;

(E) interest paid toward the purchase of income producing property;

(F) insurance premiums;

(G) taxes paid on income producing property;

(H) Transportation costs will be allowed only if the person must move from place to place in the course of business.

(ii) The following items will not be allowed as business expenses:

(A) payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;

(B) net losses from previous periods;

(C) federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses;

(D) depreciation.

R982-403-9. HEAT Financial Eligibility and Payment Determination.

All countable income received in the previous calendar month for the current applicant household will be used to determine eligibility. Terminated income received in the previous calendar month or the month of application is exempt if no new source of income is identified. Failure to provide verification of income will result in the HEAT application being denied.

Verification of countable income includes preceding or current month's SSI or SSA checks, divorce decrees, award letters, or current check stubs if the income is stable and the amount is the same as the actual income received in the previous calendar month.

KEY: energy assistance, self-employment income, income eligibility, payment determination
October 1, 2014 35A-8-1403
Notice of Continuation June 28, 2017

R982. Workforce Services, Administration.
R982-404. Energy Assistance: Asset Standards.
R982-404-1. Resource Limits.

The value of any household assets, either real or personal property, will not be counted when determining eligibility for the HEAT program.

KEY: energy assistance, financial disclosures
July 9, 2012 35A-8-1403
Notice of Continuation June 28, 2017

R994. Workforce Services, Unemployment Insurance.
R994-102. Employment Security Act, Public Policy and Authority.
R994-102-101. Authority and Statement of the Rules.

(1) One of the purposes of the Employment Security Act, Utah Code Section 35A-4-101 et seq., the Act, is to lighten the burdens of persons unemployed through no fault of their own by maintaining their purchasing power in the economy. The legislature, in establishing this program, recognized the substantial social ills associated with unemployment and sought to ameliorate these problems with a program to pay workers for a limited time while they seek other employment.

(2) The Department of Workforce Services (Department) is responsible for protecting the investment of employers who contributed to the unemployment insurance fund, the interests of the unemployed workers who may be eligible for the dollars provided by the fund, and the community which benefits from a stable workforce through the maintenance of purchasing power.

(3) The legal authority for these rules and for the Department to carry out its responsibilities is found in Utah Code Sections 34A-1-104 and 35A-4-101 et seq.

(4) These rules are to be liberally construed and administered and doubts should be resolved in favor of finding coverage of the employee and assisting those who are attached to the work force.

KEY: unemployment compensation
June 21, 2017 35A-4-102

R994. Workforce Services, Unemployment Insurance.
R994-106. Combined Wage Claims.
R994-106-101. General Definition.

(1) An unemployed individual who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which he could not otherwise qualify or will increase the benefits for which he qualifies in a single state. He must file a combined wage claim if he is eligible to do so rather than claim extended benefits. If he wishes, he has the right to reject a combined-wage claim and file against a state in which he is separately eligible or to cancel the combined wage claim and file no claim.

(2) Section 35A-4-106 provides for the wages earned in other states to be used to qualify for unemployment insurance benefits. Many of the restrictions and guidelines contained in this Rule are required by federal regulations which govern the establishment and payment of unemployment benefits when a claimant uses wages earned outside the state or his residence at the time the claim is filed. If there is a conflict between this Rule and federal regulations, the federal regulations will be followed.

R994-106-102. Definition of Terms.

(1) Agent State.

Agent state means any state in which an individual files a claim for benefits from another state or states.

(2) Combined-Wage Claim.

A combined-wage claim is a claim using wage credits from more than one state.

(3) Combined-Wage Claimant.

A claimant who uses wages from more than one state to establish monetary entitlement to benefits.

(4) Commuter.

Commuter applies to each individual who, immediately before becoming unemployed, customarily commuted from his residence in the agent state to his work in the liable state.

(5) Employment and Wages.

"Employment" refers to all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise. "Wages" refers to all remuneration for such employment.

(6) Interstate Benefit Payment Plan.

This is the plan approved by the Interstate Conference of Employment Security Agencies under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(7) Liable State.

The liable state is the same as the paying state.

(8) Paying State.

The paying state is the state against which the claimant is filing that actually issues the benefit checks.

(9) State.

State includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(10) State Agency.

The agency which administers the unemployment compensation law of a state.

(11) Transferring State.

A transferring state is one in which the claimant had covered employment and wages within the base period of the paying state that can be transferred to establish a claim. Wages from more than one transferring state can be used to establish a combined wage claim.

R994-106-103. Restrictions on Combined Wage Claims.

(1) Any unemployed individual who has had covered employment in two or more states may file a combined wage claim unless:

(a) he has established a claim under any other state;

(b) the benefit year has not ended;

(c) and there are still unused benefit rights.

(2) Unused Benefit Rights.

A claimant will not be considered to have unused benefit rights on a prior claim if:

(a) all benefits have been exhausted, or

(b) benefits have been denied by a seasonal restriction, or

(c) benefits have been postponed for an indefinite period or for the remainder of the benefit year. A disqualification imposed because a claimant is not able to work or available for work is not considered a denial of a claimant's benefit rights.

(3) Use of Wages in Paying State.

If an individual files a combined wage claim, all wages and employment in all states during the base period of the paying state must be included. He may not select a paying state but must accept that state which is determined under Subsection 35A-4-106(1)(b) and R994-106-103.

(4) Base Period for a Combined Wage Claim.

The base period for a combined wage claim means the "base period" as established in the paying state.

(5) Benefit Year for a Combined Wage Claim.

The benefit year for a combined wage claim is the "benefit year" of the paying state.

R994-106-104. Determining the Paying State in Combined Wage Claim (CWC) Claims.

(1) The paying state is the state in which the claimant elects to file a CWC, provided the claimant has employment and wages in that state's base period and the claimant qualifies for unemployment under the law of that state using combined employment and wages. The claimant is responsible for deciding the state against which to file a CWC.

(2) If a claimant files a CWC in Utah but is not monetarily eligible for benefits against Utah, Utah will advise the claimant of Utah's qualifying requirements and his or her potential eligibility for benefits, if any, under Utah law. The claimant will also be told that he or she has the option to file in any other state/s where he or she has employment and wages. Utah will advise the claimant that state laws vary and there are differences in weekly benefits amounts and other qualifying requirements in different states. If the claimant wishes to explore options with any other state/s, Utah will provide the claimant with contact information for that/those state/s.

(3) If a claimant is found to be monetarily ineligible in Utah, the claimant can file in another state where he or she has employment and wages in that state's base period. If a claimant was found monetarily ineligible in another state and then files in Utah, Utah can use the effective date of the original claim, provided the claimant filed within the appeal period from the original state's monetary denial.

R994-106-105. Responsibilities of Utah when Transferring Wages.

(1) Transfer of Employment and Wages.

Wages earned in Utah in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state. Such wages will be transferred without restriction as to their use for determination and benefit payments under the provisions of the Paying state's law.

(2) Employment and Wages Not Transferrable.

Wages earned in Utah will not be transferred if the employment and wages have been:

(a) transferred to any other paying state and have not been returned unused, or which have been previously used as the basis of a monetary determination which establishes a benefit year; or

(b) canceled or are otherwise unavailable to the claimant as a result of a monetary determination made prior to its receipt of the request for transfer, if such determination has become final or is subject to a pending appeal. If the appeal is finally decided in favor of the combined wage claimant, any employment and wages determined eligible for use as wages in establishing monetary eligibility will be transferred to the paying state and any necessary redetermination will be made by the paying state.

R994-106-106. Non-Monetary Eligibility Determination.

When a combined wage claim is filed, the law and eligibility requirements of the paying state apply, except the paying state may not determine an issue that has previously been adjudicated by the transferring state. Such exception will not apply, however, if the transferring state's determination of the issue resulted in making the combined-wage claim possible as provided in 20 CFR 616.8 of the Code of Federal Regulations.

R994-106-107. Conditions for Withdrawing a Combined Wage Claim.

(1) Because of the complexities of combining wages, disadvantages to the claimant may not be apparent until after the monetary determination has been received. Therefore, the claimant has the right to withdraw from a combined wage claim anytime before the monetary determination of the paying state becomes final. The claimant's right to withdraw is inherent and need not be supported by reasons, provided that he either:

(a) repays in full any benefits paid to him, or

(b) authorizes the state against which he will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

R994-106-108. Notification and Appeals.

(1) Notification.

A combined wage claimant will receive a monetary determination notice from the paying state once the wage information from all states is received. If a transferring state refuses to transfer wages because the wage credits were canceled under a disqualification or because the work was not covered, the claimant will be sent an appealable determination by the transferring state.

(2) Protests and Appeals.

A protest of a monetary determination from a transferring state or from a paying state other than Utah may be made. If the paying state or any transferring state makes any decision, monetary or nonmonetary, adverse to a combined-wage claimant's interest, the claimant is entitled to a written determination and the right to request reconsideration or an appeal in accordance with the law of the state making the determination.

KEY: unemployment compensation, interstate compacts
June 21, 2017 35A-4-106(1)

R994. Workforce Services, Unemployment Insurance.
R994-303. Contribution Rates.
R994-303-101. Benefit Ratio Contribution Rate Computation.

(1) There are two types of contribution rates, "new" employer rates and "experience" rates.

(2) The new employer rate is assigned to employers with less than one fiscal year of reporting experience. New employers are assigned a rate based on the two-year average benefit ratio, which is calculated by dividing benefit costs by taxable wages, of all employers in the respective industry. The overall new employer rate is the benefit ratio of the respective industry multiplied by the reserve factor plus the Social Cost. New out-of-state contractors are assigned the maximum tax rate allowable under state law unless they purchase an existing business.

(3) Experience rates are assigned to employers with one or more fiscal years of reporting experience. The overall contribution rate is calculated annually for each employer using the following three components:

(a) The "Benefit Ratio" is determined by dividing the total of all chargeable benefits paid to the employer's former employees in the last four fiscal years, by the employer's taxable wages for the same time period.

(b) The "Reserve Factor" adjustment to the benefit ratio, which may be an increase, decrease, or 1.0, is used to maintain an adequate balance in the benefit reserve fund.

(c) The "Social Cost" is applied to all employers to recover benefit costs that cannot be attributed to a specific employer.

The overall tax rate is calculated using the following formula:

Benefit Ratio X Reserve Factor + Social Cost

(4) Contribution rates may be affected by delinquent contributions, delinquent reports, and acquiring a business of another employer, as these terms are used in Sections 35A-4-301, 35A-4-303, 35A-4-304, 35A-4-306, and 35A-4-307.

(5) The objective of the benefit ratio method of taxation is to employ an experience rating system that provides for equitable allocation of costs, increases incentives for employer participation, and makes building and maintaining a solvent reserve fund the responsibility of those employers who use the system.

R994-303-102. Computation Date.

"Computation date" means July 1st of any year. The computation date is not the date contribution rates are computed but merely serves as a reference point to identify the period of time used to compute rates.

R994-303-103. Notification of Contribution Rate and Appeal Rights.

The Department will notify the employer of its contribution rate prior to the beginning of the calendar year to which the rate applies. If the employer protests this rate, the protest must be filed within 30 days after the date the "Contribution Rate Notice" is issued by filing a written appeal stating the grounds upon which the appeal is based. This right to appeal the contribution rate does not, however, give new rights of appeal to protest the benefit costs used in computing the rate. The appeal rights for protesting the payment of benefits to former employees, charges to the employer, or the correctness of benefit charges are established in Section 35A-4-306 of the Act.

R994-303-104. Qualified Employer.

A "qualified employer" is an employer who was an employer during all four quarters of the fiscal year immediately preceding the computation date.

If an employer reopens its UI account after the account has been closed, the Department will determine if the employer qualifies for an experience rate or new employer industry rate. A qualified employer will be assigned an overall contribution rate for their account using the employer's unemployment experience during the past four fiscal years immediately preceding the computation date. If the reopening employer had no payroll for two or more consecutive calendar years immediately prior to the reopen date, the employer will be considered a new employer and will receive a new account number and the new employer industry rate, pursuant to Section 35A-4-203 of the Act.

R994-303-105. Rates Assigned to Qualified Employers.

(1) On or after January 1, 1988, a qualified employer who fails to pay all contributions due for the "applicable fiscal year" which is the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, will be assigned a contribution rate equal to the overall contribution rate or the assigned contribution rate, plus an additional one percent surcharge. Unpaid contributions for fiscal years prior to the applicable fiscal year have no effect on the employer's rate, as provided in Subsection 35A-4-303(9)(b).

(2) Contributions assessed for the applicable fiscal year after the rates are computed will not cause the one percent surcharge to be added to the rate for the following year.

(3) A qualified employer who has been assigned the 1 percent surcharge in addition to his overall contribution rate because of delinquent contributions for the applicable fiscal year shall be reassigned a rate based upon his own experience, as provided under the experience rating provisions of the Act, effective the first day of the quarter in which full payment of contributions due is made. The Department will reassign a rate effective January 1st of the year if the Department determines that the party liable for the delinquent contributions was not properly notified of the liability.

(4) Delinquent Reports - Effect on Rate.

A delinquent report is one that is not properly filed when due. Failure to file the delinquent report by the time the contribution rates are computed will be treated as if a report had been filed showing no payroll for that quarter. This will usually result in a higher contribution rate. A delinquent report that still has not been filed by the end of the calendar year will not result in adding the one percent surcharge to an employer's overall contribution rate as a penalty. Other penalties and interest assessed due to delinquent reports are discussed in Section 35A-4-305 of the Act.

R994-303-106. Successorship and Its Effect on Contribution Rates.

(1) Definitions.

(a) "Successor" is the employing unit which acquires the business or acquires substantially all of the assets of a business.

(b) "Predecessor" is the employing unit which last operated the business.

(c) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(d) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Therefore, acquiring use of assets is defined to mean that the successor obtains the physical assets such as cash, inventories, equipment, or buildings. Use of assets may also include the acquisition of

the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(e) "Business" is an employing unit which pursues an activity or enterprise for gain, benefit, advantage or livelihood.

(f) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(g) "Discontinued operations" means that immediately at the point of acquisition, the preceding employer has no continuing business activity in this state. Liquidation of accounts receivable or "wind-down payroll" is not considered to be a continued business activity. In determining whether an employer is a successor, the phrases "substantially all" and "discontinued operations" are applied conjunctively. If less than 90 percent of all the assets are acquired, then there is no successorship and the "discontinued operations" test need not be applied.

(h) "Like part or character" will be defined by using the most current North American Industry Classification System (NAICS) manual. There is no succession unless it is determined that a like part or character of the business acquired is retained. An example of such a situation occurs when a new owner acquires a business or substantially all of its assets. The business formerly operated as an automotive service station and the predecessor employer has ceased to operate. If the new owner opens as an automotive repair shop and not a service station, there is no successorship.

(2) If the acquired business was closed for 30 or more consecutive calendar days during its normal operating period immediately prior to the acquisition, there is no successorship.

(3) Succession.

In the case of succession, effective on the first day of the year following the year in which the business is acquired, a successor will pay a contribution rate newly computed on the basis of the combined experience of the predecessor and the successor unless the date of acquisition is January 1, in which case the new rate takes effect immediately. The successor's rate during the year of acquisition will be as follows:

(a) Successor Was a Qualified Employer.

If the successor was a "qualified employer" immediately prior to the time of the acquisition, it shall continue to pay the rate assigned prior to the acquisition.

(b) Successor Was Not a Qualified Employer.

If the successor was an employer but not a "qualified employer" immediately prior to the time of the acquisition and acquires one or more businesses simultaneously, it shall pay a new rate computed based on the combined experience of the predecessor(s) and the successor. This rate shall be effective on the first day of the next calendar quarter. The successor pays its previously assigned rate for the balance of the quarter in which the acquisition occurs unless the acquisition occurs on the first day of that quarter, in which case the newly computed rate takes effect on that day.

(i) Simultaneously as used in this section means the same day.

(ii) If the predecessor(s) and successor are not qualified employers and have different NAICS codes, and the successor continues to operate the acquired business(s), the successor will retain their original NAICS code.

(c) Successor Was Not an Employer.

If the successor was not an employer immediately prior to the time of the acquisition it shall pay the predecessor's rate for the current calendar year. If the successor simultaneously acquires two or more businesses it shall pay a rate newly computed based on the combined experience of the predecessors. This new computed rate shall be effective on the day of acquisition.

(4) Effect of Contributions Owed by the Predecessor on the Successor's Rate.

A successor will be assigned a 1 percent surcharge in addition to its overall contribution rate if unpaid contributions are owed by the predecessor in the prior fiscal year. The one percent surcharge applies in the years that the successor's rate is affected by the predecessor's payroll and benefit costs.

(5) Successorship Determination and Burden of Proof.

The Department will determine whether the predecessor's payroll and benefit costs will be transferred to the successor. Either the predecessor or successor may appeal the determination within 10 days of the date the determination is issued. Once the determination has been made, the burden of proof is on the predecessor or the successor to show that the determination was made in error.

R994-303-107. Fiscal Year.

Fiscal year is defined in Subsection 35A-4-301(6), and means the year beginning with the 1st day of July of one year and ending the 30th day of June of the next year.

R994-303-108. Benefit Costs.

(1) Net benefit costs are defined as those benefits actually paid during the fiscal year without regard to the week ending date for which the payment is made. The benefit is considered paid on the date the unemployment payment is issued.

(a) Net benefit costs do not include those benefits established as an overpayment during the same fiscal year in which the benefits were paid.

(b) Benefit costs from a prior fiscal year subsequently established as an overpayment will be deducted from cumulative benefit costs beginning with the fiscal year in which the overpayment is established. Such benefit costs will not be deducted from benefit costs attributable to prior fiscal years except in cases where failure to make the deduction would result in a gross inequity and provided the employer has made a written request within 30 days of when it knew or should have known of the establishment of the overpayment.

(c) Once the fiscal year ends, any benefit costs from a prior fiscal year which are subsequently identified as an overpayment will be deducted from the cumulative benefit costs beginning with the year in which the overpayment is established and subsequent years.

(2) If the benefit costs used to compute the basic tax rate are less than zero, they will be treated as if they were zero. In this case, the minimum overall tax rate an employer can be assigned will be the social tax rate.

R994-303-109. Actual Reserve Fund Balance.

The "actual reserve fund balance" used in the calculation of the reserve factor is this state's Trust Fund balance on deposit with the United States Department of the Treasury as of June 30 preceding the computation date.

KEY: unemployment compensation, rates
June 21, 2017 35A-4-303

R994. Workforce Services, Unemployment Insurance.
R994-401. Payment of Benefits.
R994-401-101. Payment of Benefits.

Eligibility is established and benefits are paid on a weekly basis. The week starts on Sunday and ends on Saturday. Benefits do not become due until the end of the week for which benefits are claimed.

R994-401-201. Weekly Benefit Amount (WBA), Maximum Benefit Amount (MBA), and Monetary Determination.

(1) The formulas for determining the WBA and the MBA are found in Section 35A-4-401.

(2) The wages used to determine the WBA and the MBA are limited to wages reported to the Department by base period employers and verifiable wages paid by additional base period employers reported by the claimant in the initial claim. If an employer does not report wages and the claimant can verify wages from that employer, those wages may be included.

(3) The Department will send the claimant a "Notice of Monetary Determination." The notice will inform the claimant of the WBA, MBA, and the wages used to determine the claimant's monetary eligibility. The notice will also inform the claimant of his or her right to appeal the monetary determination. The claimant must notify the Department of any errors in the monetary determination. The time limit for notifying the Department of any errors or for appealing a monetary determination is the same as filing an appeal from an initial Department determination and is governed by rules R994-508-102 through R994-508-104.

(4) The monetary determination is based on the wages actually paid during the base period regardless of when the work was performed.

(5) To be monetarily eligible, a claimant must have earned base period wages of 1 and 1/2 times the high quarter wages and also meet a minimum dollar amount as established by the monetary base period wage requirement as defined in Section 35A-4-201.

(6) For any claimant whose benefit year is effective on or before January 1, 2011, if the claimant is not monetarily eligible under the 1 and 1/2 times requirement in paragraph (5) of this section, but meets the monetary base period wage requirement, the claimant can still be eligible under this section if the claimant had earnings of at least five percent of the "monetary base period requirement for insured work," as defined in Subsection 35A-4-201(17), in each of at least 20 weeks during the base period. The earnings must be for work performed during each of the 20 weeks, all of which must fall within the base period, regardless of when the claimant received payment for the work. The requirement that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in R994-401-202.

(7) The dollar amount for each of the 20 weeks required to establish eligibility under subsection (6) of this section will be determined by the monetary base period requirement for insured work in effect for the calendar year in which the initial claim is filed even if some or all of the 20 weeks are in a different calendar year.

(8) If the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, and the claimant's benefit year is effective on or before January 1, 2011, it is the claimant's responsibility to show 20 weeks of covered employment which meet the minimum dollar amount. Acceptable proof of covered employment includes:

(a) appropriately dated check stubs issued by the employer;

(b) a written statement from the employer showing dates of employment and the amount of earnings for each week;

(c) time cards;

(d) canceled payroll checks; or

(e) personal or business records kept in the normal course of employment that would substantiate work and earnings.

(9) An employer's potential liability is based on its proportion of the claimant's base period wages. Employers will be informed of the wages used in determining a claimant's monetary entitlement, the employer's potential liability for benefits costs, and the right to and time limitation for requesting relief of charges or a correction to wages. A contributory employer is given a notice of all benefit costs each quarter and has the opportunity to report any errors or omissions to the Department at that time as well. The quarterly notices give the employer 30 days to advise the Department of any corrections, as provided in Subsection 35A-4-306(3).

(10) A party failing to file a timely appeal or protest may lose its right to have the monetary determination corrected. An untimely appeal or protest may be considered if the party had good cause, as defined in R994-508-104.

(11) The Department may revise the monetary determination after the expiration of the appeal time if there has been a mistake as to the facts or the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not have reasonably filed a timely appeal. The decision to revise a monetary determination after the appeal time has expired is discretionary with the Department.

R994-401-202. Wages Used to Determine Monetary Eligibility.

(1) "Wages paid" include those wages actually received by the worker and wages constructively paid, provided the employer's liability for payment has become unconditionally established. Wages are considered constructively paid, for the purposes of this section, on the earliest of: the next regular pay day in accordance with the employer's customary payment practices, the day required by contractual agreement, or as required by state law.

(2) Quarterly wages are all wages paid or constructively paid during a quarter regardless of when those wages are earned. Bonus or lump sum payments which do not meet the definition of vacation and severance pay in R994-405-701 et seq, made within the quarter which were not due on any specific day shall be treated as wages paid during the quarter in which the payment is made unless a request is made by the claimant for apportionment to the calendar quarters in which the remuneration was earned. Any such request must be received by the Department within ten days of the issuance of the monetary determination as provided by Subsection 35A-4-401(7).

R994-401-203. Retirement or Disability Retirement Income.

(1) A claimant's WBA is reduced by 100% of any retirement benefits, social security, pension, or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for claims with an effective date on or after July 4, 2004, and on or before December 11, 2010 the reduction for social security retirement benefits will only be 50%. For claims with an effective date on or after December 12, 2010, there is no reduction for social security retirement benefits. The payments must be:

(a) from a plan contributed to by a base-period employer. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period;

(b) based on prior employment and the claimant qualifies because of age, length of service, disability, or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k) or IRA should not be used to reduce the WBA Payments from

workers' compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former spouse directly and it is pursuant to court order or a signed, stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under Subsection 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving, retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed, would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the WBA. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's WBA will be made.

(2) A claimant who could be eligible for a retirement income, but does not apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the MBA in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in Subsection 35A-4-401(2)(d). The recomputation is effective with the first full calendar week in which the claimant is eligible to receive applicable retirement benefits or adjustments to those benefits.

R994-401-301. Partial Payments - General Definition.

(1) A claimant's earnings that are equal to or less than 30 percent of the WBA will not result in a reduction of the WBA. The claimant's gross weekly earnings over 30 percent of the WBA will be deducted dollar for dollar from the WBA in the week in which it was earned. A claimant who earns less than the WBA and files a claim may be credited with a waiting week, or paid a partial payment. A claimant who earns equal to or more than the WBA will not be credited with a waiting week nor be eligible for any partial payment for that week.

(2) All work and earnings must be reported on a weekly basis. For example, when an otherwise eligible claimant is required to report income from a farm, and is paid one day of holiday pay and then accepts a one-day temporary job, the work and earnings from all three sources must be reported.

(3) Earnings are reportable in the week the work is performed which may be different from the week payment is received. If a claimant receives payment for commission sales, or other periodic earnings, the income must be attributed to, and reported in, the week when the work was performed.

(4) Reportable earnings which a claimant must report on the weekly claim include any and all wages, remuneration, or compensation for services even if the employer is not required to pay contributions on these wages.

R994-401-302. Liability of Part-time Concurrent Reimbursable Employers When There Is No Job Separation from the Part-Time Reimbursable Employer.

(1) If the claimant worked for two or more employers during the base period and is separated from one or more of these employers, but continues in the regular part-time work with a reimbursable employer, the nonseparating part-time employer will not be liable for benefit costs provided;

(a) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed,

(b) the claimant is not working on an "on call" basis,

(c) the number of hours of work have not been reduced, and

(d) the nonseparating employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(2) The claimant's WBA will be determined on the basis of the total base period employment and earnings, however, earnings from the part-time reimbursable employer will be excluded from the calculation of the MBA.

(3) If the claimant is later separated from this employer within the benefit year or the claimant's hours of work are reduced below the customary number of hours worked during the base period, the reimbursable employer will be liable to pay the proportionate amount of benefit payments paid thereafter. A new monetary determination can also be made at the request of the claimant and would include all base period wages. The effective date of the revised monetary determination will be the first day of the week in which the request is made. See R994-307-101 for contributory employers.

R994-401-303. Income the Claimant Must Report While Receiving Unemployment Benefits.

(1) All payments whether an hourly wage, salary, or commission paid for the performance of any service shall be reportable unless specifically identified as an exception in R994-401-304 or R994-401-305.

(2) Gratuities or tips paid directly to an employee by a customer or the employer for a service provided are reportable.

R994-401-304. Income Which May Be Reportable Under Certain Circumstances.

(1) A bonus paid as a direct result of past performance of service for a specific period prior to the separation is not reportable with respect to any week after the separation. A bonus is a payment given to an employee in addition to usual wages. If the payment is made contingent upon termination it will be considered a severance payment. Payments given at the time of separation that are based on years of service will also be considered severance payments. Severance payments are reportable in accordance with Subsection 35A-4-405(7).

(2) If a claimant is hired to start working on a certain day and the work is not available as of that date but the employer puts the claimant on the payroll as of that date, the claimant is considered employed and those wages are reportable.

(3) Any payment made in consideration of training that is required by the employer is considered to be reportable income unless shown to be:

(a) expenses necessary for school, for example, tuition, fees, and books;

(b) travel expenses;

(c) actual costs for room and board where costs are created as a necessary expense for the schooling; and

(d) the payments are exempt from income tax liability.

(4) If a claimant is being paid under a contract for the express purpose of being available to an employer, and there are limits placed upon the individual either as to how much earnings, if any, may be earned while receiving these payments, or on the time the individual must hold himself or herself available to the employer, the payment is considered reportable income.

(5) Any payments in kind are reportable, including the cash value for meals, lodging, or other payment unless the meals and lodging are excluded from the definition of wages by the Internal Revenue Service as under the following conditions:

(a) Meals that are furnished:

(i) on the business premises of the employer;

(ii) for the convenience of the employer;

(iii) without charge for substantial non-compensatory business reasons, not for the purpose of additional compensation. Substantial noncompensatory business reasons will be limited to meals which are provided:

(A) to have employees available for emergency call;

(B) to have employees with restricted lunch periods;

(C) because adequate eating facilities are not otherwise available.

(b) Lodging that is furnished:

(i) on the business premises of the employer;

(ii) as a condition of employment;

(iii) for the convenience of the employer, for example, to have an employee available for call at any time.

(6) Pensions that do not meet the criteria in R994-401-203 are not reportable income.

R994-401-305. Income a Claimant Is Not Required to Report While Receiving Unemployment Benefits.

Payments which are received for reasons other than the performance of a service are not reportable income. Some examples are:

(1) Payments from corporate stocks and bonds;

(2) Public service in lieu of payment of fines;

(3) Fees paid for jury duty or as witness fees will be considered reimbursement for expenses;

(4) Amounts paid specifically, either as an advance or reimbursement, for bona fide, ordinary, and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. If an accounting by the employee is not required by the employer for actual expenses, the Department shall not require itemization;

(5) Payments specifically identifiable as not being provided for the rendering of service will not be considered wages including grants, public or private assistance or other support payments;

(6) Money or other considerations which are normally provided as a matter of course to immediate family members;

(7) Income from investments;

(8) Disability or permanent impairment awards under the Workers' Compensation Act; and,

(9) Payment attributable to the value of any equipment owned by the claimant and necessary for the performance of the job. If there is no contract of hire or the contract does not delineate what portion is payable for the equipment, the Department will determine the claimant's wages based on the prevailing wage for similar work under comparable conditions.

KEY: unemployment compensation, benefits

June 21, 2017 **35A-4-401(1)**
35A-4-401(2)
35A-4-401(3)
35A-4-401(6)

R994. Workforce Services, Unemployment Insurance.
R994-402. Extended Benefits (EB).
R994-402-201. General Definition.

When a claimant has been unable to find work for an extended period of time and has exhausted all of his or her regular benefits, EB may be paid providing the state is in an extended benefit period as defined by Subsection 35A-4-402(7). A claimant does not have to have additional wage credits to qualify for EB as the original claim is extended with the same weekly benefit amount. The maximum benefit amount for a claimant is one-half of the amount of his or her original regular claim up to a maximum of 13 times the weekly benefit amount. All EB stop when the unemployment rate drops below a certain level, even if the claimant has not used all of his or her EB. If the claimant has sufficient additional wage credits and can qualify for a new regular claim, EB are not allowed. There is no waiting week on an EB claim. Availability requirements for EB are different from those for regular claimants. Unless the claimant has good prospects as defined in R994-402-205, the EB claimant must have no occupational restrictions, must reduce wage expectations and increase his or her work search efforts beyond those expected of regular benefit claimants. The only exception to this requirement is for claimants who have Department approval while attending school.

R994-402-202. General Requirements for EB.

(1) Notwithstanding the provisions of the Act concerning regular benefits, a claimant is ineligible for EB during any week of unemployment in the claimant's eligibility period if the Department finds that during such period:

(a) the claimant failed to accept any offer of suitable work as defined in R994-402-204 or failed to apply for any suitable work to which he or she was referred by the Department; or

(b) he or she failed to make an active, good faith effort to secure employment as provided in Section R994-402-207.

(2) Any claimant who has been found ineligible for EB under Subsection R994-402-202(1) will be denied benefits until he or she has performed services in bona fide covered employment for at least four subsequent weeks, whether or not consecutive, and earned wages for such services equal to at least six times the claimant's weekly benefit amount.

(3) Notwithstanding R994-402-204, no claimant will be denied EB for failure to accept an offer of, or apply for, any job which meets the definition of suitability as described in that subsection if:

(a) the position was not offered to the claimant in writing as defined in R994-402-206 or was not listed with the Department of Workforce Services;

(b) such failure would not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of R994-402-204 or

(c) the claimant meets the requirements of "good prospects" as defined in R994-402-205.

(4) No work is considered to be suitable work unless it complies with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code as provided in Subsection 35A-4-405(3).

(5) The Department shall refer any claimant entitled to EB to any suitable work which meets the criteria prescribed in R994-402-204.

R994-402-203. Eligibility for EB.

To be eligible for EB the claimant must:

(1) exhaust regular benefits as defined by Subsection 35A-4-402(7)(h) and his or her benefit year must have ended after the beginning of the EB period;

(2) be ineligible for a regular claim in Utah or any other state or under any federal unemployment program;

(3) file for EB in accordance with instructions;

(4) meet EB requirements for availability and work search; and

(5) accept suitable work.

R994-402-204. Suitable Work.

(1) Suitable work for EB claimants includes work:

(a) in any occupation within the claimant's capabilities unless he or she can show that his or her prospects for obtaining work in his or her regular occupation are good, as defined in Subsection R994-402-205 and

(b) paying the greater of the federal or state minimum wage provided the gross average pay exceeds the claimant's weekly benefit amount plus any supplemental unemployment benefit.

(2) Suitable work for EB claimants does not include work:

(a) available as the result of a strike or labor dispute;

(b) having wages, hours or other conditions of the work which are substantially less favorable to the claimant than those prevailing for similar work in the locality (for example, a skilled claimant, such as a carpenter, may be required to take a job paying the minimum wage in another occupation, but he or she does not have to take a carpenter job paying minimum wage if that wage is substantially less than the prevailing wage for carpenter work in his or her locality);

(c) which requires the claimant as a condition of being employed to join a union or to resign from or refrain from joining any labor organization;

(d) which would not be considered suitable for a regular claimant, such as unsafe working conditions or work requiring a move or travel beyond normal commuting distance. Except with regard to the type of occupation and the wages, standards for determining the suitability of work are the same for EB claimants as for regular claimants.

R994-402-205. Good Prospects.

When a claimant has a definite assurance of full-time employment in his or her customary occupation to begin within four weeks the claimant is considered to have good prospects. He or she must continue to seek work, but suitability will be determined under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) without regard to the definition in R994-402-204.

R994-402-206. Position Offered in Writing.

A position is considered "offered in writing" if it is listed with the Department and the claimant is referred or offered a referral by the Department even if the claimant is given the referral verbally. If an employer makes a verbal offer of work and the job is not listed with the Department, the provisions of Section 35A-4-405(3) may apply.

R994-402-207. Systematic and Sustained Work Search.

(1) A systematic and sustained work search means that the claimant must register for work with the Department and contact at least 4 employers each week, unless advised otherwise by an authorized Department representative. The claimant should have a realistic plan for finding employment. All of the employer contacts cannot be made on the same day except in circumstances where a work search on several days of the week is impractical. Work search contacts must be with employers not contacted within the last 90 days.

(2) Except for claimants who have received Department approval under section R944-403-201, there is no good cause exception for failure to make a systematic and sustained work search after the claimant has received instructions with regard to the required work search. If the claimant is ill or otherwise unable to seek work, but files a claim for benefits after being

instructed with regard to work search requirements, benefits must be denied under Section 35A-4-402 and not under Section 35A-4-403(1)(c) unless the claimant was hospitalized for treatment of an emergency or life-threatening condition. Benefits may be allowed if the claimant failed to make the required work search because he or she was on jury duty and regular unemployment benefits would have been allowed under similar circumstances. If the claimant made the required work search but was unable to work or unavailable for work for more than half the normal workweek, he or she might be found ineligible under Sections R994-403-111c and R994-403-112c.

(3) If the claimant has obtained part-time work, he or she is still required to make a work search on those days when he or she is not working. The number of contacts may be reduced if the claimant is working a substantial amount of time in the part-time job.

(4) Work search requirements may be suspended if the Department determines that severe weather conditions or other calamity has forced a suspension of such activities by most members of the community.

R994-402-208. Claimant Responsibilities.

(1) EB claimants must report all information as requested by the Department.

(2) An EB claimant is required to keep a detailed record of the employers contacted including:

(a) the name and address of the employer,

(b) the date of contact with the employer,

(c) the person contacted if personal contact is made,

(d) the result of the contact,

(e) the type of work sought,

(3) Failure to keep records or provide such information will result in a conclusion that a work search was not made unless other convincing evidence is provided.

R994-402-209. Period of Disqualification.

A claimant who fails to accept an offer of suitable work or fails to actively seek work will be denied benefits for the week in which such failure occurs and for the following weeks until he or she has had employment during at least four subsequent weeks and has earned at least six times his or her weekly benefit amount. The earnings do not have to be in consecutive weeks, but must be bona fide, covered, employment.

R994-402-210. Requalification Requirement Following a Disqualification for a Crime in Connection with Employment.

All disqualifications for regular unemployment benefits continue to be in effect on EB claims. In addition, a claimant who has been denied benefits under Subsection 35A-4-405(2)(b) is not eligible to receive EB until he or she has returned to bona fide covered employment and earned at least six times his or her weekly benefit amount in employment subsequent to the disqualifying separation, even if the disqualification period has ended.

R994-402-211. Out of State Claimants.

A claimant who resides in another state but is filing against Utah under the interstate benefit payment plan is only entitled to two weeks of EB while residing in another state if the state of residence is not in an extended benefit period. The amount of the payment, whether it is a full or partial payment, is immaterial. When a payment of any amount has been made for each of two weeks, whether or not consecutive, no further payments can be made.

R994-402-212. Overpayments.

Overpayments established on extended benefit payments are collectible in accordance with the provisions of Subsections 35A-4-406(4) and 35A-4-406(5).

R994-402-601. Notice.

(1) Immediately after it has been determined that an extended benefit period will become effective or will end in the state, the Department will make a public announcement and give personal notice calculated to reach the largest practicable number of potentially eligible persons within the state.

(2) The notice given at the beginning of an extended benefit period will state

(a) the first date on which potential claimants may file a claim for, and become eligible for, extended benefit payments,

(b) eligibility criteria for EB, and

(c) what action individuals must take to protect their benefit rights.

(3) Whenever there has been a determination that an EB period will end, the Department will provide notice to all claimants currently filing claims for EB of the forthcoming end of the EB period and its effect on the claimant's right to EB.

R994-402-602. Effective Date of EB Claim.

The effective date of claims for EB will be the Sunday of the first week during which EB are payable in accordance with Subsection 35A-4-402(7) provided the claimant has filed as instructed. The effective date of the EB claim may be backdated upon a showing of good cause under Subsections 35A-4-403(1) and 35A-4-401(1)(b).

KEY: unemployment compensation, employee recruitment, extended benefits
June 21, 2017 35A-4-402(2)
35A-4-402(6)(a)