

R25. Administrative Services, Finance.**R25-10. State Entities' Posting of Financial Information to the Utah Public Finance Website.****R25-10-1. Purpose.**

The purpose of this rule is to establish procedures related to the posting of the participating state entities' financial information to the Utah Public Finance Website (UPFW).

R25-10-2. Authority.

This rule is established pursuant to Subsection 63A-3-404, which authorizes the Division of Finance to make rules governing the posting of financial information for participating state entities on the UPFW after consultation with the Utah Transparency Advisory Board.

R25-10-3. Definitions.

(1) "Utah Public Finance Website" (UPFW) means the website created in UCA 63A-3-402 which is administered by the Division of Finance and which permits Utah taxpayers to view, understand, and track the use of taxpayer dollars by making public financial information available on the internet without paying a fee.

(2) "Participating state entities" means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions, including institutions of higher education such as colleges, universities, and the Utah College of Applied Technology, and includes all component units of these entities as defined by the Governmental Accounting Standards Board (GASB).

(3) "Division" means the Division of Finance of the Department of Administrative Services.

R25-10-4. Public Financial Information.

(1) Participating state entities shall submit detail revenue and expense transactions from their general ledger accounting system to the UPFW at least quarterly and within one month after the end of the fiscal quarter. The detail transactions for all participating state entities that are recorded in the central general ledger of the State, FINET, shall be submitted by the Division.

(2) Participating state entities will submit employee compensation detail information on a basis consistent with its fiscal year to the UPFW at least once per year and within three months after the end of the fiscal year. The employee compensation detail information that is recorded in the central payroll system of the State that is operated by the Division will be submitted by the Division.

(a) Employee compensation detail information will, at a minimum, break out the following amounts separately for each employee:

- (i) Total wages or salary
- (ii) Total benefits only, benefit detail is not allowed
- (iii) Incentive awards
- (iv) Reimbursements
- (v) Leave paid, if recorded separately from wages or salary in the participating state entity's payroll system.

(b) In addition, the following information will be submitted for each employee:

- (i) Name
- (ii) Hourly rate
- (iii) Gender
- (iv) Job title

(3) Entities must not submit any data to the UPFW that is classified as private, protected, or controlled by UCA 63G-2, Government Records Management Act. All detail transactions or records are required to be submitted; however, the words "not provided" shall be inserted into any applicable data field in lieu of private, protected, or controlled information.

R25-10-5. UPFW Data Submission Procedures.

(1) Entities must submit data to the UPFW according to the file specifications listed below.

(a) The public financial information required in R25-10-4 will be submitted to the UPFW in a pipe delimited text file. The detail file layout is available from the Division and is posted on the UPFW under the Helps and FAQs tab.

(b) Data will be submitted to the UPFW at the detail transaction level. However, the detailed transactions for compensation information for each employee may be summarized into transactions that represent an entire fiscal year.

(c) Each transaction submitted to the website must contain the information required in the detail file layout including:

(i) Organization - Categorizes transactions within the entity's organization structure. At least 2 levels of organization will be submitted but not more than 10 levels.

(ii) Category - Categorizes transactions and further describes the transaction type. At least 2 levels of category will be submitted but not more than 7 levels.

(iii) Fund - Categorizes transactions by fund types and individuals funds. At least 1 but not more than 4 levels of fund will be submitted.

KEY: Utah Public Financial Website, transparency, state employees, finance

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63A-3-404

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R81. Alcoholic Beverage Control, Administration.**R81-7. Event Permits.****R81-7-1. Authority and Purpose.**

(1) Pursuant to 32B-2-202(1)(c)(i) and (1)(n), this rule establishes procedures and criteria for issuing and denying event permits in accordance with 32B-9.

R81-7-2. Definitions.

(1) "Conducting" means the conduct, management, control or direction of an event. An applicant may be deemed to be conducting the event if there is a contract in which the applicant has been designated as the agent for the event's beverage service.

R81-7-3. Application Guidelines.

(1) An event permit application will not be submitted to the Director for consideration until the requirements of Section 32B-1-304, 32B-9-201-203, -304 (for single event permits) and -405 (for temporary beer event permits) have been met, including:

(a) A complete application including all documents and supplemental materials listed on the department's application checklist has been submitted to the department one month prior to the event; and

(b) The department has conducted an investigation in compliance with 32B-9-202(1)(a).

(2) Late applications will be accepted up to 7 business days prior to the event. Late applications will be reviewed as time allows and are not subject to the provisions in R81-7-4(1)(ii) and (iii) below.

R81-7-4. Guidelines for Issuing Permits.

(1) Once submitted to the director, the application will be considered in compliance with 32B-9-202 and 303 (for single event permits) and -403 (for temporary beer event permits), including consideration of R81-7-5 below.

(i) After consideration of the totality of the circumstances, the director will either issue a preliminary decision to issue or deny the event permit or refer the application to the commission in accordance with 32B-9-202(3).

(ii) If the director issues a preliminary decision to deny issuance of an event permit, the decision shall be provided in writing detailing the basis for the denial.

(iii) An applicant may submit a request for review by the commission within the time limits of 32B-9-202(3)(b) and (c) related to the three business day review period and regularly scheduled commission meetings. If at least three commissioners request review of the denial in compliance with 32B-9-202(3)(b) and (c), the commission shall review the request at their next regularly schedule commission meeting.

(2) In accordance with 32B-9-202(2)(d), the director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4).

(3) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(4) For purposes of 32B-9-202(4), the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.

R81-7-5. Additional Consideration for Event Permits.

(1) Additional Consideration for Single Event Permits: In accordance with 32B-9-303(2), a single event permit is issued to entities in existence for a year or more conducting a convention, civic or community enterprise.

(a) As part of local consent required by 32B-9-201(1)(c), the locality may provide a recommendation as to whether the

entity is conducting a civic or community enterprise.

(b) The director may consider the recommendation of the local authority in determining whether the entity is conducting a civic or community enterprise.

(c) Notwithstanding subsection (1), an event permit will not be issued if, based on the totality of the circumstances, it is determined that the permit is being used to circumvent other applicable requirements of 32B-9 Event Permit Act.

(2) Violation History: In accordance with 32B-9-202(2)(d), in considering the nature of the event, if there is a violation of the applicant, the event, or the venue within the last 36 months, the director will consider violation history in making a determination regarding whether to issue the permit or in determining additional controls as outlined in section (3) below.

(3) Control Measures: In accordance with 32B-9-202(2)(d), in considering the nature of the event, the director must determine that adequate and appropriate control measures will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

(a) Before an event permit may be issued by the director, the following control measures must be present at the event unless relaxed by the director in accordance with section (c) below.

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age;

(ii) Any person assigned to check proof of age shall have completed the alcohol server training seminar outlined in 62A-15-401 in the last three years;

(iii) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages;

(iv) The event shall be properly secured and completely delineated by some type of physical structure(s), such as fencing, walls, gates and secured entry and exits; and

(v) A minimum of one (1) security person for every fifty (50) people estimated to be in the consumption area at one time: security may include police officers, hired security, organization staff members and security volunteers.

(b) In accordance with 32B-9-202(2)(e), the following additional control measures must be present for an outdoor public event or a large-scale public event where minors are present, unless relaxed by the director in accordance with section (c) below.

(i) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages;

(ii) All dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored;

(iii) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s); and

(iv) The proof of age location(s) will either issue a hand stamp and/or non-transferable wristband.

(c) The director, after reviewing the facts and circumstances of a particular event, has the discretion to relax any of the control measures outlined in Subsection (a) and (b) above or to require additional control measures as a condition of issuing an event permit provided that the director has first reasonably determined that such modification will not increase the likelihood of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

**KEY: alcoholic beverages, event permits
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- 32B-9-101
- 32B-9-102
- 32B-9-201
- 32B-9-202
- 32B-9-203
- 32B-9-204
- 32B-9-301
- 32B-9-302
- 32B-9-303
- 32B-9-304
- 32B-9-305
- 32B-9-401
- 32B-9-402
- 32B-9-403
- 32B-9-404
- 32B-9-405
- 32B-9-406

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

R156-1-101. Title.

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

R156-1-102. Definitions.

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

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification. A license that has been placed on probation subject to terms and conditions is not active and in good standing.

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare

of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

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

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

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

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

(vii) remorse.

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

(i) forced or compelled restitution;

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

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

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

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

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

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

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

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

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

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

(20) "Probation" means disciplinary action placing terms and conditions upon a license;

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

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

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

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

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

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

(25) "Remove or modify restrictions" means to remove or

modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

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

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

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

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

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

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

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

(31) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-501.

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

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

R156-1-103. Authority - Purpose.

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

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

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

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

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

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

the chapters in Title 58.

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

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

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

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the Director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

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

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

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

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

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

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

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

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

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

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

immediately precedes the licensing technician's or program technician's signature.

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

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

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer to serve as the factfinder for formal adjudicative proceedings involving the Residence Lien Recovery Fund.

(f) Residence Lien Recovery Fund Manager. The Residence Lien Recovery Fund manager, bureau manager, or program coordinator designated in writing by the Director shall be the presiding officer for the informal adjudicative proceeding described in Subsection R156-46b-202(1)(q), for approval or denial of an application for a tax credit certificate.

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

(a) Commission.

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

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

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

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

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

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

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

upon the evidence presented in the adjudicative proceeding before the presiding officer.

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

(vi) In accordance with Subsection 58-55-103(10), if the Director or the Director's designee refuses to concur in an adopted order of the Construction Services Commission or its designee, the Director or the Director's designee shall return the order to the Commission or its designee with the reasons set forth in writing for refusing to concur. The Commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return. The Director or the Director's designee shall consider the Commission's resubmission of an adopted order and either concur rendering the order final, or refuse to concur and issue a final order, within 90 days of the date of the initial recommended order. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the Commission or its designee and the Director or the Director's designee to resolve the reasons for the Director's refusal to concur in an adopted order.

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

(viii) The final order issued by the Construction Services Commission and concurred in by the Director or the Director's designee, or nonconcurred in by the Director or the Director's designee, and issued by the Director or the Director's designee, may be appealed by filing a request for agency review with the Executive Director or the Director's designee within the Department.

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

(b) Director. The Director or the Director's designee is designated as the presiding officer for the concurrence role, except where the Director or the Director's designee refuses to concur and issues the final order as provided by Subsection (a), on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

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

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

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

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission

in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

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

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

R156-1-110. Issuance of Investigative Subpoenas.

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

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

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

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

(3)(a) Service may be made:

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

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

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

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

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

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

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

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

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

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

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

R156-1-111a. Qualifications for Tax Certificate -

Definitions.

In addition to the definitions in Title 58, Chapter 1, as used in Title 58, Chapter 1, or in this rule:

(1) "Psychiatrist", as defined under Subsection 58-1-111(1)(d), is further defined to include a licensed physician who is board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

(2) Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

R156-1-111b. Qualifications for Tax Certificate - Application Requirements.

An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

(1) the original application made available on the Division's website, containing the signed attestation of compliance; and

(2) any additional documentation that may be required by the Division to verify the applicant's representations made in the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) This section applies in circumstances where an applicant or licensee:

(a) is not automatically disqualified from licensure pursuant to a statutory provision; and

(b)(i) has history that reflects negatively on the person's moral character, including past unlawful or unprofessional conduct; or

(ii) has a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare.

(2) In a circumstance described in Section (1), the following factors are relevant to a licensing decision:

(a) aggravating circumstances, as defined in Subsection R156-1-102(2);

(b) mitigating circumstances, as defined in Subsection R156-1-102(17);

(c) the degree of risk to the public health, safety or welfare;

(d) the degree of risk that a conduct will be repeated;

(e) the degree of risk that a condition will continue;

(f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(g) the length of time since the last conduct or condition has occurred;

(h) the current criminal probationary or parole status of the applicant or licensee;

(i) the current administrative status of the applicant or licensee;

(j) results of previously submitted applications, for any regulated profession or occupation;

(k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(m) psychological evaluations; or

(n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

(a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or

(b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) architect;

(b) audiologist;

(c) certified public accountant emeritus;

(d) certified court reporter;

(e) certified social worker;

(f) chiropractic physician;

(g) clinical mental health counselor;

(h) clinical social worker;

(i) contractor;

(j) deception detection examiner;

(k) deception detection intern;

- (l) dental hygienist;
- (m) dentist;
- (n) dispensing medical practitioner - advanced practice registered nurse;
- (o) dispensing medical practitioner - physician and surgeon;
- (p) dispensing medical practitioner - physician assistant;
- (q) dispensing medical practitioner - osteopathic physician and surgeon;
- (r) dispensing medical practitioner - optometrist;
- (s) dispensing medical practitioner - clinic pharmacy;
- (t) genetic counselor;
- (u) health facility administrator;
- (v) hearing instrument specialist;
- (w) landscape architect;
- (x) licensed advanced substance use disorder counselor;
- (y) marriage and family therapist;
- (z) naturopath/naturopathic physician;
- (aa) optometrist;
- (bb) osteopathic physician and surgeon;
- (cc) pharmacist;
- (dd) pharmacy technician;
- (ee) physician assistant;
- (ff) physician and surgeon;
- (gg) podiatric physician;
- (hh) private probation provider;
- (ii) professional engineer;
- (jj) professional land surveyor;
- (kk) professional structural engineer;
- (ll) psychologist;
- (mm) radiologic practical technician;
- (nn) radiologic technologist;
- (oo) security personnel;
- (pp) speech-language pathologist;
- (qq) substance use disorder counselor; and
- (rr) veterinarian.

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

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

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

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

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

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

R156-1-308a. Renewal Dates.

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

TABLE RENEWAL DATES		
Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	December 31	even years
Certified Court Reporter	May 31	even years
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	December 31	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
Construction Trades Instructor	November 30	odd years
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license renewal	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection	November 30	even years
Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator		
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner		
Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
Electrician		
Apprentice, Journeyman, Master, Residential Master	Residential Journeyman, November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Hair Designer	September 30	odd years
Hair Designer Instructor	September 30	odd years
Hair Designer School	September 30	odd years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years

Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber, Restricted Associate Osteopathic Physician	May 31	even years
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber, Restricted Associate Physician	January 31	even years
Plumber		
Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician, Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

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

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

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

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

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

(e) Certified Medical Language Interpreter Tier 1 and 2 licenses shall be issued for a period of three years and may be renewed. The initial renewal date of March 31, 2017, is established for these license classifications, subject to the provisions of Subsection R156-1-308c(7) to establish the length of the initial license period.

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

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

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

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

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

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

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

(m) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

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

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

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

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

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

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

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

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

R156-1-308d. Waiver of Continuing Education Requirements - Credit for Volunteer Service.

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

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

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

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

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

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

the licensee has the required competency, abilities and education.

(2)(a) In accordance with Subsection 58-1-203(1)(g) and 58-55-302.5(2)(e)(i), the Division may grant continuing education credit to a licensee for volunteering as a subject-matter expert in the review and development of licensing exams for the licensee's profession.

(b) Subject to specific limitations established by rule by the Division, in collaboration with a licensing board, or the Construction Services Commission, this volunteer continuing education credit shall:

(i) apply to the license period or periods during which the volunteer service was provided;

(ii) be granted on a 1:1 ratio, meaning that for each hour of attendance, the licensee may receive one hour of credit;

(iii) be deemed "core", "classroom", or "live" credit, regardless of whether the licensee attended meetings in person or electronically; and

(iv) at the licensee's discretion, all or part of the credit hours may be counted towards any law or ethics continuing education requirements.

(c) The licensee shall be responsible for maintaining information with respect to the licensee's volunteer services to demonstrate the services meet the requirements of this subsection.

(3) In accordance with Section 58-13-3, a health care professional licensee may fulfill up to 15% of the licensee's continuing education requirements by providing volunteer services at a qualified location, within the scope of the licensee's license, earning one hour of continuing education credit for every four documented hours of volunteer services.

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

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

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

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

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

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

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

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

(4) Upon completion of the audit, investigation, or inspection, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is

unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An applicant for relicensure following revocation of licensure shall:

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

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

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

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

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

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

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

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

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

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

(d) pay any fines or citations owed to the Division prior to the surrender of license.

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

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

R156-1-310. Cheating on Examinations.

(1) Policy.

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

(2) Cheating Defined.

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

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose

of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

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

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

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

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

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

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

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

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

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

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

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

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

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

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

(4) advising the director at the conclusion of a licensee's

diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

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

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

R156-1-404d. Diversion - Procedures.

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

(2) Following the completion of diversion committee duties, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the Division not to exceed 30 days from the service of the proposed diversion agreement, to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsection 58-1-404.

(3) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, or if the director finds that the licensee does not meet the qualifications for diversion, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

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

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

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

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

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

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

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

the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

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

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

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a); or

(9) failing, as a health care provider, to follow the health care claims practices of Subsection 31A-26-301.5(4), in violation of Subsection 58-1-508(2).

R156-1-502. Administrative Penalties.

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

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Fine
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00
58-1-501(2)(o)	\$ 0 - \$250.00
58-1-508(2)	\$ 250.00

SECOND OFFENSE

58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00
58-1-501(2)(o)	\$251.00 - \$500.00
58-1-508(2)	\$ 500.00

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-

502(2)(j)(iii).

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

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

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

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

R156-1-503. Reporting Disciplinary Action.

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

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

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

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

R156-1-601. Telehealth - Definitions.

In accordance with Section 26-60-103 and Subsection 26-60-104(1), in addition to the definitions in Title 58 and Rule R156, as used in this section:

- (1) "Asynchronous store and forward transfer" means the same as defined in Subsection 26-60-102(1).
- (2) "Standards of Practice" means those standards of practice applicable in a traditional health care setting, as provided in Subsection 26-60-103(1)(a)(ii).
- (3) "Distant site" means the same as defined in Subsection 26-60-102(2).
- (4) "Originating site" means the same as defined in Subsection 26-60-102(3).
- (5) "Patient" means the same as defined in Subsection 26-60-102(4).
- (6) "Patient Encounter" means any encounter where medical treatment and/or evaluation and management services are provided. For purposes of this rule, the entire course of an inpatient stay in a healthcare facility or treatment in an emergency department is considered a single patient encounter.
- (7) "Provider" means the same as defined in Subsection 26-60-102(5)(b), an individual licensed under Title 58 to

provide health care services, and:

(a) shall include an individual exempt from licensure as defined in Section 58-1-307 who provides health care services within the individual's scope of practice under Title 58; and

(b) for purposes of this section, "provider" may include multiple providers obtaining informed consent and providing care as a team, consistent with the standards of practice applicable to a broader practice model found in traditional health care settings.

(8) "Synchronous interaction" means the same as defined in Subsection 26-60-102(6).

(9) "Telehealth services" means the same as defined in Subsection 26-60-102(7).

(10) "Telemedicine services" means the same as defined in Subsection 26-60-102(8).

R156-1-602. Telehealth - Scope of Telehealth Practice.

(1) This rule is not intended to alter or amend the applicable standard of practice for any healthcare field or profession. The provider shall be held to the same standards of practice including maintaining patient confidentiality and recordkeeping that would apply to the provision of the same health care services in an in-person setting.

(2) In accordance with Section 26-60-103 and Subsection 26-60-104(1), a provider offering telehealth services shall, prior to each patient encounter:

- (a) verify the patient's identity and originating site;
- (b) obtain informed consent to the use of telehealth services by clear disclosure of:
 - (i) additional fees for telehealth services, if any, and how payment is to be made for those additional fees if they are charged separately from any fees for face-to-face services provided to the patient in combination with the telehealth services;
 - (ii) to whom patient health information may be disclosed and for what purpose, including clear reference to any patient consent governing release of patient-identifiable information to a third-party;
 - (iii) the rights of patients with respect to patient health information;
 - (iv) appropriate uses and limitations of the site, including emergency health situations;
 - (v) information:
 - (A) affirming that the telehealth services meet industry security and privacy standards, and comply with all laws referenced in Subsection 26-60-102(8)(b)(ii);
 - (B) warning of potential risks to privacy notwithstanding the security measures;
 - (C) warning that information may be lost due to technical failures, and clearly referencing any patient consent to hold the provider harmless for such loss; and
 - (D) disclosing the website owner/operator, location, and contact information; and
 - (c) allow the patient an opportunity to select their provider rather than being assigned a provider at random, to the extent possible;
 - (d) ensure that the online site from which the provider offers telehealth services does not restrict a patient's choice to select a specific pharmacy for pharmacy services.
- (3) In accordance with Subsection 26-60-103(1)(b), it is not an acceptable standard of care for a provider offering telehealth services to establish a diagnosis and identify underlying conditions and contraindications to a recommended treatment based solely on an online questionnaire, except as specifically provided in Title 58, Chapter 83, the Online Prescribing, Dispensing and Facilitation Licensing Act.
- (4) In accordance with Subsection 26-60-103(1)(c), a provider offering telehealth services shall be available to the patient for subsequent care related to the initial telemedicine

services, by:

- (a) providing the patient with a clear mechanism to:
 - (i) access, supplement, and amend patient-provided personal health information;
 - (ii) contact the provider for subsequent care;
 - (iii) obtain upon request an electronic or hard copy of the patient's medical record documenting the telemedicine services, including the informed consent provided; and
 - (iv) request a transfer to another provider of the patient's medical record documenting the telemedicine services;
- (b) if the provider recommends that the patient needs to be seen in person, such as where diagnosis requires a physical examination, lab work, or imaging studies:
 - (i) arranging to see the patient in person, or directing the patient to the patient's regular provider, or if none, to an appropriate provider; and
 - (ii) documenting the recommendation in the patient's medical record; and
- (c) upon patient request, electronically transferring to another provider the patient's medical record documenting the telemedicine services, within a reasonable time frame allowing for timely care of the patient by that provider.

(5) In accordance with Subsection 26-60-103(1)(d), a provider offering telehealth services shall be familiar with available medical resources, including emergency resources near the originating site.

(6) In settings and circumstances where an established provider-patient relationship is not present, a provider offering telehealth services shall establish a provider-patient relationship during the patient encounter, in a manner consistent with standards of practice including providing the provider's licensure and credentials.

(7) Nothing in this section shall prohibit electronic communications consistent with standards of practice applicable in traditional health care settings, including those:

- (a) between a provider and a patient with a preexisting provider-patient relationship;
- (b) between a provider and another provider concerning a patient with whom the other provider has a provider-patient relationship;
- (c) in on-call or cross coverage situations in which the provider has access to patient records;
- (d) in broader practice models where multiple providers provide care as a team, including, for example:
 - (i) within an existing organization; or
 - (ii) within an emergency department; or
- (e) in an emergency, which as used in this section means a situation in which there is an occurrence posing an imminent threat of a life-threatening condition or severe bodily harm.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

November 8, 2018

Notice of Continuation December 6, 2016

58-1-106(1)(a)

58-1-308

58-1-501(2)

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

R156-46a-101. Title.

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

R156-46a-102. Definitions.

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

R156-46a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 46a.

R156-46a-104. Organization - Relationship to Rule R156-1.

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

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

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

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

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

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

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

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

R156-46a-304. Continuing Education.

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

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

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

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

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

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

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

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

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

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

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

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

R156-46a-502d. Form of Written Informed Consent.

In accordance with Subsection 58-46a-502(4)(c), an agreement to provide hearing instrument specialist goods and services shall include the patient's informed consent in substantially the following form.

TABLE

ACKNOWLEDGEMENT OF INFORMED CONSENT

As a consumer of hearing instrument specialist goods or services, you are required to be informed of certain information as provided in Utah Code Ann. Sections 58-46a-502 and 503.

1. The list of goods and services to be provided to you include the following: (add additional lines as required)
 Services: Charge:

Goods (circle as applicable: new, used, reconditioned): Charge:
 These goods (circle as applicable: are, are not) covered by a warranty or guarantee. Additional information about any warranty or guarantee is attached.

2. The licensees providing these goods and services are: (add additional lines as required)
 hearing instrument specialist:

name: license number:
 hearing instrument specialist intern
 name: license number:

3. The expected results of the goods and services are:

4. If the goods to be provided include a hearing instrument:

(a) Additional information is attached about hearing instruments that work with assisted listening systems that are compliant with ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the American with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.

(b) You have the right to receive a written receipt or written contract, which includes notice to you that you have a 30-day right to cancel the purchase and obtain a refund if you find the hearing aid does not function adequately for you.

(i) The 30-day right to cancel shall commence from either the date the hearing aid is originally delivered to you or the date the written receipt or contract is delivered to you, whichever is later. The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

(ii) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.

5. If the goods and services provided do not substantially enhance your hearing as stated in the expected results, you are entitled to:

(a) necessary intervention to produce satisfactory recovery results consistent with the representations made above at no

additional cost; or

(b) refund of the fees you paid for the hearing instrument within a reasonable period of time after finding that the hearing instrument does not substantially enhance your hearing. I hereby acknowledge being informed of the above and consent to the receive the goods and services.
 Patient's Signature and Date

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

August 17, 2015 58-1-106(1)(a)

Notice of Continuation November 8, 2018 58-1-202(1)(a)

58-46a-101

58-46a-304

R156. Commerce, Occupational and Professional Licensing.
R156-81. Retired Volunteer Health Care Practitioner Act Rule.

R156-81-101. Title.

This rule is known as the Retired Volunteer Health Care Practitioner Act Rule.

R156-81-102. Definitions.

In addition to the definitions in Title, Chapters 1 and 81, as used in Title 58, Chapter 81 or this rule:

(1) "Qualified location", as defined in Subsection 58-81-102(3), must be a Section 501(c)(3) non-profit organization recognized by the Internal Revenue Service.

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of public safety, law enforcement or firefighter fraternal association.

(3) "Supervision" is further defined according to the regulating professional practice acts as referred to in Subsection 58-81-102(2).

R156-81-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsections 58-1-106(1)(a) and 58-81-104(4) to enable the division to administer Title 58, Chapter 81.

R156-81-104. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1)(g) and 58-1-301(3), the application requirements for licensure in Section 58-81-104 are established as follows. The applicant shall:

- (1) complete the division approved form for the delegation of service agreement; and
- (2) sign the affidavits in the application certifying that:
 - (a) the applicant understands the applicable laws and rules;
 - (b) the applicant will engage exclusively in volunteer health care services;
 - (c) the applicant will not receive compensation for services; and
 - (d) an agreement for delegation of services is in place.

R156-81-105. Organization - Relationship to Rule R156-1.

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

R156-81-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to a licensee under Title 58, Chapter 81 is the same renewal cycle applicable to a similarly situated licensed practitioner as established by rule in Section R156-1-308a.

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

KEY: licensing, volunteer health care practitioner

June 22, 2009 58-1-106(1)(a)
Notice of Continuation November 27, 2018 58-81-104(4)

R162. Commerce, Real Estate.**R162-2e. Appraisal Management Company Administrative Rules.****R162-2e-101. Title.**

This chapter is known as the "Appraisal Management Company Administrative Rules."

R162-2e-102. Definitions.

- (1) "Affiliation" means a business association:
- (a) between:
 - (i) two individuals registered, licensed, or certified under Section 61-2g; or
 - (ii) an individual registered, licensed, or certified under Section 61-2g and:
 - (A) an appraisal entity; or
 - (B) a government agency;
 - (b) for the purpose of providing an appraisal service; and
 - (c) regardless of whether an employment relationship exists between the parties.
- (2) The acronym "AMC" stands for appraisal management company.
- (3) "Business day" means a day other than:
- (a) a Saturday;
 - (b) a Sunday; or
 - (c) a state or federal holiday.
- (4) "Client" is defined in Section 61-2e-102(10).
- (5) "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:
- (a) is competent according to USPAP standards;
 - (b) recognizes and agrees to comply with:
 - (i) laws and regulations that apply to the appraiser and to the assignment;
 - (ii) assignment conditions; and
 - (iii) the scope of work outlined by the client; and
 - (c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:
 - (i) multiple listing service data; and
 - (ii) county records.
- (6)(a) "Employee" means an individual:
- (i) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and
 - (ii) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person.
- (b) "Employee" does not include an independent contractor who performs duties other than at the discretion of, and subject to the supervision and instruction of, another person.
- (c) For purposes of applying Subsection R162-2e-401(1)(g), an appraiser who completes an assignment is considered to be an employee of the AMC that offers the assignment if:
- (i) this subsection (a) describes the employment relationship between the appraiser and the AMC; or
 - (ii) pursuant to this subsection (a), the appraiser is an employee of a company:
 - (A) that is wholly owned by the AMC; or
 - (B) in which the AMC owns a controlling interest.
- (7) "Select" means:
- (a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and
 - (b) for purposes of assigning an appraisal activity to an appraiser:
 - (i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or
 - (ii) to compile, from among the appraisers included in the

AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through e-mail.

(8) The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice.

R162-2e-201. Registration Required - Qualification for Registration.

- (1) The division may not register or renew the registration of an AMC that fails to:
- (a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act";
 - (b) register with the Utah Division of Corporations and Commercial Code and provide to the division its certificate of existence;
 - (c) pursuant to this Subsection (4)(a), evidence having secured a surety bond that:
 - (i) is in the amount of \$25,000; and
 - (ii) provides, throughout the full period of registration, for the division to make a claim:
 - (A) on behalf of an appraiser; and
 - (B) for unpaid fees as awarded to the appraiser in a final judgment entered by a court of competent jurisdiction; or
 - (d) comply with any provision of these rules.
- (2) The division shall schedule a hearing before the board for an AMC that:
- (a)(i) applies for registration or renewal of registration;
 - (ii) has a control person who discloses, or the division finds through its own research, an issue that might affect the control person's moral character; and
 - (iii) the division determines that the board should be aware of the issue; or
 - (b) fails to provide an adequate explanation for the AMC's:
 - (i) plan to ensure the use of licensed appraisers in good standing;
 - (ii) plan to ensure the integrity of the appraisal review process; or
 - (iii) plan for record keeping.
- (3)(a) An AMC shall register with the division in the name of the legal entity under which it is registered with the Utah Division of Corporations and Commercial Code and conducts the business of appraisal management in Utah and in other states.
- (b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:
- (i) at the time of registration; or
 - (ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.
- (c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:
- (i) in writing; and
 - (ii) within ten business days of making the change.
- (4)(a) The deadline by which an AMC shall demonstrate that the entity has obtained a surety bond pursuant to Subsection (1)(c) is as follows:
- (i) For an AMC that applies for registration on or after October 1, 2012, the bond shall be obtained as a condition for initial registration.
 - (ii) For an AMC that obtained its initial registration prior to January 1 2011 and applies for renewal on or after October 1, 2012, the bond shall be obtained as a condition of the 2012 renewal.
 - (iii) For an AMC that is not described by this Subsection (4)(a)(i) or (ii), the deadline for obtaining the surety bond shall be January 1, 2013.

(b) Failure to comply with an applicable deadline as outlined in this Subsection (4)(a) shall result in the automatic suspension of an AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

(c) If an AMC's surety bond lapses or is canceled during the period of registration, the division shall:

(i) allow the AMC 30 days in which to comply with the surety bond requirement; and

(ii) if the AMC fails to obtain or reinstate a surety bond within 30 days, immediately and automatically suspend the AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

R162-2e-201a. Claims Against an AMC Bond.

(1) To bring a claim against a bond that is held by an AMC pursuant to Section 61-2e-204(2)(c) and Subsection R162-2e-201(1)(c), an appraiser shall:

(a) demonstrate that a court of competent jurisdiction has awarded the appraiser a final judgment against the AMC for the fee(s) claimed;

(b) demonstrate that the appraiser earned the fee(s) claimed and that the AMC has had a reasonable period of time in which to tender payment; and

(c) submit a complaint to the division alleging nonpayment of fee(s):

(i) after a reasonable period of time for payment has passed; and

(ii) no later than 30 days after obtaining a judgment as required under this Subsection (1)(a).

(2) In evaluating whether an AMC has had a reasonable period of time in which to tender payment, the division shall consider the following:

(a) if a payment deadline is specified in the contract that applies to the assignment for which the appraiser claims an unpaid fee, whether the payment deadline has passed; or

(b) if the applicable contract is silent as to a period for payment, whether at least 90 days have passed since the date on which the appraiser submitted a report that complied with the assignment, including all scope of work requirements, as determined by the division in its sole discretion.

R162-2e-301. Use of Licensed or Certified Appraisers.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide to the division a statement signed by its designated controlling person that explains the AMC's system for verifying that:

(1) an appraiser who is added to the panel is licensed or certified; and

(2) an appraiser who is assigned to complete a real estate appraisal remains licensed or certified in good standing.

R162-2e-302. Adherence to Standards.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide a statement to the division, signed by its designated controlling person, certifying that the AMC verifies that each appraisal assignment offered to an appraiser acting as an independent contractor is:

(1) signed by an appraiser who is included in the AMC's panel at the time the assignment is offered; and

(2) includes the information outlined in Subsection 304(1)(b)-(c).

R162-2e-303. Recordkeeping.

An AMC's statement of recordkeeping required upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe:

(1) its system for maintaining a record of:

(a)(i) the name of the appraiser who accepts each assignment and signs the corresponding appraisal report; and

(ii) if an assignment is accepted by an appraisal entity, the name of the entity that accepts the assignment; and

(b) the client that requested the appraisal report;

(2) the format in which the records required to be kept under Section 61-2e-303(1) are maintained;

(3) an explanation of the system through which the AMC backs up any records kept as required by Section 61-2e-303(1) that are maintained in an electronic format;

(4) the location where the records are kept; and

(5) the name of the records custodian.

R162-2e-304. Required Disclosures and Customary and Reasonable Compensation.

(1) In addition to the disclosures required by Section 61-2e-304, an AMC shall:

(a) notify the appraiser in writing at the time an appraiser is first added to an appraiser panel:

(i) of the general criteria the AMC uses to rank an appraiser on the panel; and,

(ii) if the AMC chooses to separate appraisers into different tiers, of the general criteria the AMC uses to distinguish one tier from another;

(b) notify the affected appraisers in writing of any changes if, after the notice provided for in subsection (1)(a), the AMC changes any of the general criteria the AMC considers relative to an appraiser's ranking, tier, or classification within the panel structure;

(c) at the time an assignment is offered, disclose to the appraiser:

(i) the total amount that the appraiser may expect to earn from the assignment:

(A) disclosed as a dollar amount; and

(B) delineating any fees or costs that will be charged by the AMC to the appraiser;

(ii)(A) the property address;

(B) the legal description; or

(C) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;

(iii) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and

(iv) any known deadlines within which the assignment must be completed;

(d) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;

(e) before requiring the appraiser to submit a completed report, disclose to the appraiser:

(i) the total fee that will be collected by the AMC for the assignment; and

(ii) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and

(f) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(i) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(ii) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

(2) Within 10 business days of receiving a written request from an appraiser or any inquiry related to the business relationship between the appraiser and the AMC, an AMC shall

reply to the appraiser in writing. An inquiry may address subjects including the AMC scorecard, appraiser panel status, clarification on work assignments, training, or notice of the removal of an appraiser from an AMC panel as required by Utah Code Section 61-2e-306. If the AMC has requested appraisers send such inquiries to a specific address or email address, appraisers shall direct such inquiries accordingly.

(a) If the AMC has determined to decrease the number of assignments to the appraiser the AMC's reply will explain the reason why the AMC has made this decision;

(b) if the AMC has determined to cease offering assignments to the appraiser, the the AMC's reply will explain the reason why the AMC has made this decision; and

(c) if the AMC has determined to remove the appraiser from an appraiser panel, the AMC shall provide the appraiser notice as required by Utah Code Section 61-2e-306.

(3) Any written notice or reply required by this section from an AMC to an appraiser may be communicated:

(a) by email;

(b) in a written communication to the mailing address provided by the appraiser; or

(c) by posting to a private vendor website, portal, or other digital venue to which the appraiser has access for at least 30 days following posting of the notice.

(4) For purposes of this Section, the term " general criteria" means a standard description of the factors the AMC considers when ranking or differentiating appraisers or tiers within a panel of appraisers. This does not require an AMC to disclose any algorithms, formulas, or information about proprietary processes.

(5) In replying to a request from an appraiser, an AMC is not required to reply to subsequent or multiple requests if a request unreasonably duplicates a prior request from that person.

(6) In addition to the presumptions of compliance referenced in Utah Code Subsection 61-2e-304(2)(b), an AMC is presumed to be in compliance with the Utah requirement to pay appraisers a customary and reasonable fee if the AMC compensates an appraiser for a completed appraisal at a rate consistent with the fee schedule for the state of Utah as published by the United States Department of Veterans Affairs Denver Regional Loan Center Appraisal Fee Schedule, as the fee schedule is updated from time-to-time.

R162-2e-305. Employee Requirements.

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed the 15-hour national USPAP course.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has completed the seven-hour national USPAP update course.

R162-2e-306. Offering an Appraisal Assignment and Communicating With Two or More Appraisers About a Potential Assignment.

(1) If an AMC simultaneously contacts two or more independent contractor appraisers to offer an assignment of a one to four-unit residential mortgage appraisal or to gauge interest in such an assignment, the AMC shall include in the communication the information required in R162-2e-304(1)(c). To provide adequate time for a contract appraiser to determine the appraiser's competency and to communicate interest in the assignment to the AMC, the AMC may not award the assignment to a contract appraiser until the earlier of:

(a) 120 minutes following the offering of an assignment; or

(b) each contract appraiser has affirmatively responded to the offering.

(2)(a) If a one to four-unit residential mortgage appraisal assignment is simultaneously offered to two or more independent contractor appraisers on a business day, the AMC shall allow the appraisers a minimum of 120 minutes to respond to accept the assignment before offering the assignment to other appraisers.

(b) If a one to four-unit residential mortgage appraisal assignment is simultaneously offered to two or more independent contractor appraisers on a day other than a business day, the AMC shall allow the appraisers until 9:00 A.M. Mountain Time on the next business day to accept the assignment before offering the assignment to other appraisers.

(3) If an independent contractor appraiser declines to accept an assignment or does not respond by the specified deadline, the AMC may offer the assignment to other appraisers.

(4) Nothing in this Section prohibits an AMC from communicating or attempting to communicate, directly or in real time with an independent contractor appraiser, without offering an assignment, in order to determine the appraiser's availability, willingness, competency, fee requirements, and turn time for a potential assignment. In such circumstances, the AMC is not required to wait any length of time before contacting other candidates who appear to the AMC to qualify for the potential assignment.

R162-2e-401. Unprofessional Conduct.

(1) An entity that is registered or required to be registered with the division as an AMC pursuant to Section 61-2e-201 commits unprofessional conduct if the entity:

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

(i) the client;

(ii) a person licensed under Section 61-2c or Section 61-2f; or

(iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

(i) USPAP; or

(ii) assignment conditions and certifications required by the client;

(d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited to:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report;

(e) requests, for the purpose of facilitating a mortgage loan transaction,

(i) a broker price opinion; or

(ii) any other real property price or value estimation that does not qualify as an appraisal;

(f) charges an appraiser:

(i) for a service not actually performed; or

(ii) for a fee or cost that:

(A) is not accurately disclosed pursuant to Subsection R162-2e-304(1)(a)(ii); or

(B) exceeds the actual cost of a service provided by a third party;

(g) fails to pay the appraiser's fee within 45 days of completion of the appraisal assignment;

(h) uses or retains an employee to complete an appraisal assignment without first disclosing to the client that the appraiser is an employee of the company, such that the company is acting in the capacity of an appraisal firm rather than as an AMC pursuant to Utah Code Subsection 61-2e-102(4); or

(i) when acting in the capacity of an AMC pursuant to Utah Code Subsection 61-2e-102(4), uses or retains an employee appraiser to complete an appraisal assignment.

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-2g-502b(1)(f) if the AMC requires the appraiser to:

(a) accept full payment; and

(b) remit a portion of the full payment back to the AMC.

R162-2e-402. Administrative Proceedings.

(1) An adjudicative proceeding before the board shall be conducted as an informal adjudicative proceeding.

(2)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2e-307 or 61-2e-402(2) against an AMC or an owner or controlling person of an AMC; and

(iv) an appeal from an automatic revocation under Section 61-2e-203(3)(b), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application that is denied by the division on the grounds that the controlling person's attestation to upstanding moral character is false.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of an AMC registration by the division;

(ii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iii) the denial of renewal or reinstatement of an AMC registration for incompleteness or for failure to comply with a requirement found in statute or rule.

(3)(a) An application for an AMC registration shall be deemed a request for agency action.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against an AMC, a controlling person, or an appraiser on the panel of an AMC requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter

4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in Subsection R162-2e-402(5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2e-402, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division through a registration process.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a person who is registered or required to be registered as an AMC to appear for a hearing, the division shall provide to the person the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (5)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

- (B) a summary of the testimony expected from the witness.
- (iii) Any exhibit list:
 - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
 - (B) shall be accompanied by copies of the exhibits.
- (d) Pre-hearing motions.
 - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
 - (ii) The division director shall receive and rule upon any pre-hearing motions.

KEY: administrative proceedings, appraisal management company, conduct, registration

November 5, 2018	61-2e-102(4)
Notice of Continuation April 17, 2015	61-2e-103
	61-2e-307
	61-2e-305
	61-2e-402(1)

R277. Education, Administration.**R277-106. Utah Professional Practices Advisory Commission Appointment Process.****R277-106-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-6-503(1)(a), which directs the Board to adopt rules establishing procedures for nominating and appointing UPPAC members.

(2) The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

R277-106-2. Definitions.

(1) "Nomination application" means a form prepared by the Superintendent as described in Subsection R277-106-3(2).

(2) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established under Section 53E-6-501 to assist and advise the Board in matters relating to the professional practices of educators.

R277-106-3. UPPAC Nomination and Application Process.

(1) The UPPAC Executive Secretary shall notify school districts, charter schools, and education organizations in writing of openings on UPPAC for the upcoming term by May 1.

(2) The Superintendent shall develop a nomination application through which an applicant expresses interest in serving on UPPAC, which outlines the expectations and time commitment required of a UPPAC member.

(3) A nomination application must be signed by:

(a) the applicant;

(b) in the case of a licensed educator whose primary assignment is teaching or school level, the applicant's principal and superintendent or charter school director;

(c) in the case of a licensed educator whose assignment is as a principal or at the district level, the applicant's superintendent;

(d) in the case of a licensed educator whose assignment is as a district superintendent or charter school director, the applicant's local board or charter school governing board chair; and

(e) in the case of an education organization representative, an officer of the education organization as provided in Subsection 53E-6-502(1).

(4) An educator shall submit a statement of interest and resume or vita along with the nomination application.

(5) An applicant who is interested in serving on UPPAC shall submit a nomination application to the Superintendent by May 31.

R277-106-4. UPPAC Selection Process.

(1) The UPPAC Executive Secretary shall review all complete and properly filed applications and may make recommendations to the Superintendent prior to June 1.

(2) Prior to making the recommendations described in Subsection (1), the Executive Secretary may seek additional information to provide to the Superintendent about the experience and qualification of UPPAC applicants.

(3) Prior to making the recommendations described in Subsection (1), the Executive Secretary shall consider demographic diversity, including:

(i) rural and urban representation;

(ii) geographical balance;

(iii) elementary and secondary representation;

(iv) gender diversity;

(v) ethnic diversity;

(vi) specialized knowledge of an applicant; and

(vii) representation of LEA superintendents, principals, or charter school administrators.

(4) If a current UPPAC member desires to serve a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 1 of the year in which the member's term expires.

(5) The application of a UPPAC member seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

(6) The Executive Secretary may retain nomination applications for consideration in the event of mid-term vacancies or for vacancies in subsequent years.

R277-106-5. Education Organization Member Appointments.

(1) The state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state may nominate community members to serve on UPPAC.

(2) Community members may submit their names to the education organization described in Subsection 53E-6-502(1) for nomination by the organization.

(3) The two education organization members may not serve concurrent terms.

R277-106-6. Filling of Vacancies.

(1) The UPPAC Executive Secretary shall recommend names to the Superintendent to fill UPPAC vacancies that occur midyear.

(2) The UPPAC Executive Secretary may recommend names of previous applicants for UPPAC vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented for midyear vacancies.

KEY: professional competency, professional practices

November 7, 2018

Art X Sec 3

Notice of Continuation December 14, 2016 53E-6-503(1)(a)
53E-3-401(4)

R277. Education, Administration.**R277-108. Annual Assurance of Compliance by Local School Boards.****R277-108-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

(2) The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

R277-108-2. Definitions.

(1) "Assurance document" means the Annual Assurances of Compliance list outlined in Subsection R277-108-3.

R277-108-3. Incorporation of Annual Assurances of Compliance.

(1) This rule incorporates by reference the Local Education Agency (LEA) Compliance and Assurance Checklist for 2018-2019 School Year (09/06/2018), which lists the required state and federal compliance information for identified programs and funds, including:

- (a) Board Rule;
- (b) State statute;
- (c) Federal Code of Regulations; and
- (d) Federal Law.

(2) A copy of the current Annual Assurances of Compliance List is located at:

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<https://www.schools.utah.gov/financialoperations/formsapplications?mid=2382&tid=2>; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-108-4. Assurance Document Creation and Availability.

(1) The Superintendent shall provide a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 1 of each year to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school directors.

(2) The list described in Subsection (1) shall be approved by the Board and shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance document.

(3) The Superintendent shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible and ensure the assurance document is available publicly.

R277-108-5. Process, Procedures, and Penalties.

(1) An LEA shall submit the required annual responses to the assurance document and other compliance forms on or before dates identified by the Board.

(2) An LEA's assurance document shall contain a signed attestation by the appropriate authority attesting to the accuracy and validity of all responses and assurances provided by an LEA.

(3) In the event that an LEA is unable to provide required assurances, compliance information or forms by required dates, an LEA shall provide to the Superintendent a written explanation of the LEA's inability and provide an anticipated submission date.

(4) An LEA's request for additional time to provide the

assurance shall be reviewed by the Superintendent and accepted or rejected in a timely manner.

(5) The Superintendent shall request a written explanation from an LEA and identified schools that fail to meet the reporting and compliance deadlines and that have not provided an explanation and request for a delayed submission date.

(6) Following an opportunity to provide explanations and request a delayed submission date, an LEA and identified schools shall be notified of penalties assessed by the Board against the LEA in accordance with rule R277-114, state law, or federal law.

R277-108-6. Reporting Deadlines.

Responses for the assurance document from an LEA are due to the Superintendent no later than July 1 of each year.

R277-108-7. Record Retention.

(1) Responses to the assurance document, as required by the Board, shall be kept on file by the Superintendent for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

KEY: local school boards, compliance

November 29, 2018

Art X Sec 3

Notice of Continuation September 13, 2017 53E-3-401(4)

R277. Education, Administration.**R277-474. School Instruction and Sex Education.****R277-474-1. 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) Subsections 53G-10-402(1) and (3), which direct the Board to adopt rules to allow local boards to adopt sex education materials or programs as described in this Rule R277-474 and provide sex education instruction as provided in Section 53G-10-402; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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

(a) requirements for LEAs and individual educators to select instructional materials about sex education and maturation;

(b) notice to parents of proposed sex education and maturation discussions and instruction; and

(c) direction to public education employees regarding instruction and discussion of maturation and sex education with students.

R277-474-2. Definitions.

(1) "Curriculum materials review committee" or "committee" means a curriculum materials review committee formed at the school district or charter school level as described in Section R277-474-5.

(2) "Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g" or "FERPA" means a federal law designed to protect the privacy of students' education records.

(3) "Sex education instruction or instructional programs" means any course, unit, class, activity or presentation that provides instruction or information to students as outlined under Section 53G-10-403(1)(b) about sexual abstinence, human sexuality, human reproduction, reproductive anatomy, physiology, pregnancy, marriage, childbirth, parenthood, contraception, or HIV/AIDS, other sexually transmitted diseases, and refusal skills.

(4) "Instructional materials commission" means the advisory commission authorized under Section 53E-4-402.

(5) "LEA" for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

(6) "Maturation education" means instruction and materials used to provide fifth or sixth grade students with age appropriate, medically accurate information regarding the physical and emotional changes associated with puberty, to assist in protecting students from abuse and to promote hygiene and good health practices.

(7) "Medically accurate" means verified or supported by a body of research conducted in compliance with scientific methods and published in journals that have received peer-review, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the American Medical Association.

(8) "Parental notification form" means a form developed by the Superintendent and used exclusively by LEAs or public schools for parental notification of subject matter identified in this rule.

(9) "Professional development" means training in which Utah educators may participate to renew a license, receive information or training in a specific subject area, teach in another subject area or teach at another grade level.

(10) "Utah educator" means an individual such as an administrator, teacher, counselor, teacher's assistant, or coach, who is employed by a unit of the Utah public education system

and who provides teaching or counseling to students.

(11) "Utah Professional Practices Advisory Commission or "UPPAC" means a Commission established under Section 53E-6-501 and designated to review allegations against educators and recommend action against educators' licenses to the Board.

R277-474-3. General Provisions.

(1) The following may not be taught in Utah public schools through the use of instructional materials, direct instruction, or online instruction:

(a) the intricacies of intercourse, sexual stimulation or erotic behavior;

(b) the advocacy of premarital or extramarital sexual activity; or

(c) the advocacy or encouragement of the use of contraceptive methods or devices.

(2) Educators are responsible to teach the values and information identified under Subsection 53G-10-402(1)(b).

(3) Utah educators shall follow all provisions of federal and state law including the parental notification and prior written parental consent requirements described in Sections 76-7-322 and 76-7-323 when teaching any aspect of sex education.

(4) While sex education instruction and related topics are most likely to take place in such courses as health education, health occupations, human biology, physiology, parenting, adult roles, psychology, sociology, child development, and biology, this R277-474 applies to any course or class in which these topics are the focus of discussion.

R277-474-4. State Board of Education Responsibilities.

The Superintendent shall:

(1) develop and provide professional development and assistance with training for educators on law and rules specific to sex education instruction and related issues.

(2) develop, for Board approval, a parental notification form and timelines for use by LEAs.

(3) establish a review process for sex education instructional materials and programs using the instructional materials commission and requiring final Board approval of the instructional materials commission's recommendations.

(4) approve only medically accurate sex education instruction programs.

(5) receive and track parent and community complaints and comments received from LEAs related to sex education instructional materials and programs.

R277-474-5. LEA Responsibilities.

(1) An LEA shall require all newly hired or newly assigned Utah educators with responsibility for any aspect of sex education instruction to attend professional development outlining the sex education curriculum and the criteria for sex education instruction in any courses offered in the public education system.

(2) An LEA governing board shall provide training consistent with Subsection R277-474-5(1) at least once during every three years of employment for Utah educators.

(3) An LEA governing board shall form a curriculum materials review committee at the school district or charter school level as described in Subsection (4).

(4)(a) An LEA governing board shall annually appoint and review members of the LEA's curriculum materials review committee on or before August 1.

(b) An LEA's curriculum materials review committee shall include parents, health professionals, school health educators, and administrators, with at least as many parents as school employees.

(c) The members of an LEA's committee shall:

(i) meet on a regular basis, as determined by the

membership;

(ii) select officers; and

(iii) comply with Title 52, Chapter 4, Open and Public Meetings Act.

(5) An LEA's curriculum materials review committee shall:

(a) be organized consistent with Subsection R277-474-2(1);

(b) designate a chair and procedures; and

(c) review and approve all guest speakers and guest presenters and their respective materials relating to sex education instruction in any course and maturation education prior to their presentation.

(6) The committee may not authorize the use of any sex education instructional program or maturation education program not previously:

(a) approved by the Board;

(b) approved consistent with R277-474-6; or

(c) approved under Subsection 53G-10-402(1)(c)(ii).

(7) The district superintendent or charter school administrator shall report educators who willfully violate the provisions of this rule to the Utah Professional Practices Advisory Commission for investigation and possible discipline.

(8)(a) Students may not participate in sex education instruction, maturation education, or other instructional programs without prior affirmative parent consent, as evidenced by a completed parental notification form, on file.

(b) An LEA shall obtain parental consent from a student's parent using the common parental notification form or a form that satisfies all criteria of the law and Board rules and comply with timelines approved by the Board.

(9) The parental notification form shall:

(a) explain a parent's right to review proposed curriculum materials in a timely manner;

(b) request the parent's permission to instruct the parent's student in identified course material related to sex education or maturation education;

(c) allow the parent to exempt the parent's student from attendance for a class period where identified course material related to sex education instruction or maturation education is presented and discussed;

(d) be specific enough to give parents fair notice of topics to be covered;

(e) include a brief explanation of the topics and materials to be presented and provide a time, place and contact person for review of the identified curricular materials;

(f) be retained on file with affirmative parental consent for each student prior to the student's participation in discussion of issues protected under Section 53G-10-402; and

(g) be maintained at the student's school for a reasonable period of time.

(10) An LEA shall develop a logging and tracking system of parental and community complaints and comments resulting from student participation in sex education instruction, to include the disposition of the complaints, and provide that information to the Superintendent upon request.

(11) If a student is exempted from course material required by the Board-approved Core Standards consistent with Section 53G-10-205(1), (2) and (3), the school shall:

(a) waive the participation requirement; or

(b) provide a reasonable alternative to the requirement.

R277-474-6. Local School Board or Charter School Governing Board Adoption of Sex Education and Maturation Education Instructional Materials.

(1) An LEA governing board may adopt the LEA's instructional materials if the instructional materials meet the requirements of Subsection 53G-10-402.

(2) Instructional materials adopted as described in Subsection (1) shall:

(a) comply with the criteria of Subsection 53G-10-402(1)(c)(iii) and:

(b) be medically accurate;

(c) be approved by a majority vote of the LEA governing board present at a public meeting of the LEA governing board;

(d) be available for reasonable review opportunities to residents of the school district or parents of charter school students prior to consideration for adoption; and

(e) comply with the county data review requirements as outlined in Subsection 53G-10-402(8).

(3) An LEA shall comply with the reporting requirements of Subsection 53G-10-402(1)(c)(iii)(D).

(4) A report to the Board shall include:

(a) a copy of sex education instructional materials or maturation education materials not approved by the Instructional Materials Commission that the local board or local charter board seeks to adopt;

(b) documentation of the materials' adoption in a public board meeting;

(c) documentation that the materials or program meets the medically accurate criteria as defined in Subsection R277-474-2(7);

(d) documentation of the recommendation of the materials by the committee; and

(e) a statement of the local board's or local charter board's rationale for selecting materials not approved by the instructional materials commission.

(5) An LEA governing board's adoption process for sex education instructional materials and maturation education materials shall include a process for annual review of the LEA governing board's decision.

R277-474-7. Utah Educator Responsibilities.

(1) Utah educators shall participate in training provided under Subsections R277-474-5(1) and (2).

(2) Utah educators shall use the common parental notification form or a form approved by the educator's LEA, and follow timelines approved by the Board.

(3) Utah educators shall individually record parent and community complaints, comments, and the educators' responses regarding sex education instructional programs.

(4) Utah educators may respond to spontaneous student questions for the purposes of providing accurate data or correcting inaccurate or misleading information or comments made by students in class regarding sex education.

KEY: health education, sex education, schools

November 7, 2018

Art X Sec 3

Notice of Continuation September 13, 2017-402(1) and (3)

53E-3-401(4)

R277. Education, Administration.**R277-527. International Guest Teachers.****R277-527-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Section 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services.

(2) The purpose of this rule is to establish procedures for qualified international guest teachers who meet the definition of Section R277-527-1 to be effectively hired and placed by a Utah LEA with assistance and direction from the Superintendent to encourage cultural exchange and foreign language development among Utah public school students.

R277-527-2. Definitions.

(1) "International guest teacher" or "guest teacher" means a foreign educator who:

(a) has earned a public teaching credential or license in a foreign country;

(b) is currently legally residing in the United States and the state of Utah with the specific purpose to teach in Utah public schools; and

(c) is a resident of a foreign country that has a Memorandum of Understanding with the Board as described in Subsection R277-527-3.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-527-3. Superintendent Responsibilities.

(1) On behalf of the board, the Superintendent shall sign a Memorandum of Understanding between the Board and the appropriate government agency of the country of origin of guest teachers, as approved by the Board.

(2) The Superintendent shall work with guest teachers and their resident countries and the United States Department of State, if necessary, to secure appropriate visas or travel and work documents for guest teachers to legally teach in the public schools in Utah.

(3) The Superintendent shall verify that guest teachers have appropriate licenses or credentials from the guest teachers' resident countries that satisfy the requirements of Utah law and any applicable federal requirements.

(4) The Superintendent shall work with interested LEAs to make schools aware of guest teachers with specific credentials and language skills and to inform guest teachers about openings in specific grade levels and curriculum areas in various geographic locations in Utah.

(5) The Superintendent shall require and review a guest teacher's criminal background checks required under Section 53G-11-403 and a criminal background clearance from the guest teacher's resident country or both prior to authorizing the guest teacher to work in Utah.

(6) The Board may determine that it will seek guest teachers only from foreign countries that provide transportation or per diem expenses or both for the Superintendent representatives to screen and interview potential guest teachers.

(7) Following review and approval of a guest teacher's credentials and background, a guest teacher may receive an International Guest Teacher license equivalent to a Level 1 or professional license.

R277-527-4. International Guest Teacher Requirements.

(1) A Guest teacher shall have a United States issued social security number prior to an LEA processing any payment to the guest teacher.

(2) A Guest teacher shall cooperate with the Superintendent in required submission of information including criminal background check information, copies of credentials, copies of transcripts in the language and format designated by the Superintendent.

(3) A Guest teacher shall assume all responsibility for living and transportation expenses while participating in the International Guest Teachers Program.

(4) A Guest teacher shall be responsible for compliance with all state of Utah/Board and employing LEA professional and ethical public school educator requirements.

(5) A guest teacher who violates an LEA employment or state of Utah, Board or local professional practice may have the teacher's guest employment contract terminated consistent with at will employment provisions.

(6) The conduct of an individual guest teacher may influence continued participation in an International Guest Teacher Program between the Board and a guest teacher's resident country.

R277-527-5. Other Provisions.

(1) The opportunity for a teacher from outside the United States to be licensed to teach in Utah schools with assistance provided by the Superintendent under this rule shall be available only to individuals from countries with which the Board has signed a Memorandum of Understanding.

(2) A business or third party may not facilitate a Memorandum of Understanding between a foreign country and the Board, but may facilitate the hiring process at the request of an LEA.

(3)(a) An internationally credentialed educator may seek appropriate licensing to teach in Utah schools.

(b) An educator from a country that does not have Memoranda of Understanding with the Board shall be licensed under R277-502.

(4) It is the responsibility of a prospective guest teacher or the guest teacher's home country to ensure that the guest teacher has the appropriate visa or authorization or both to live and teach in the United States for the agreed upon time period and teaching assignment.

KEY: international guest teachers

November 7, 2018

**Notice of Continuation September 13, 2018 53E-3-401(3)
53E-3-501(1)(a)**

Art X Sec 3

R277. Education, Administration.**R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports.****R277-704-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "End of course assessment" means an online end of course assessment for use by school districts and charter schools for students who take the general financial literacy course.
- C. "Endorsement" means the document required through the USOE licensing process for teachers who teach general financial literacy.
- D. "Financial and economic literacy project" means a program or series of activities developed locally to encourage the understanding of financial and economic literacy among students and their families and to assist public school educators in making financial and economic literacy an integrated and permanent part of the public school curriculum.
- E. "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.
- F. "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.
- G. "Professional development" for public school educators means the act of engaging in professional learning in order to improve student learning.
- H. "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.
- I. "USOE" means the Utah State Office of Education.

R277-704-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53E-3-505 which directs the Board to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts, and by Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is:
- (1) to provide funds appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels;
 - (2) to begin the development of a financial and economic literacy student passport;
 - (3) to provide for educator professional development using business and community expertise, allowing for maximum creativity and flexibility;
 - (4) to provide curriculum resources and assessments for financial and economic literacy;
 - (5) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12;

(6) to provide simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy for students and parents; and

(7) to help students and parents to locate and use school and community resources to improve financial and economic literacy among students and families.

R277-704-3. Financial and Economic Literacy Student Passport.

- A. The Board and the USOE shall develop and promote a financial and economic literacy student passport model, which would include tracking of student progress toward a passport.
- B. Early efforts will focus on students in grades nine through 12.
- C. Development efforts will include parent and community participation.
- D. A major goal of the development and promotion of a financial and economic literacy student passport will be to inform and educate students and their parents throughout the public school experience of the importance of financial and economic literacy and its applicability to all areas of the public school curriculum.
- E. Public schools shall provide parents/guardians and students with the following:
- (1) during kindergarten enrollment, a financial and economic literacy passport and information about post-secondary education savings options; and
 - (2) information and encouragement toward the financial and economic literacy student passport opportunity upon development as part of the SEOP/plan for college and career readiness process.

R277-704-4. General Financial Literacy End of Course Assessment.

- A. The USOE shall provide to LEAs an online end of course assessment for general financial literacy which shall:
- (1) be administered to every student who takes the general financial literacy course;
 - (2) be aligned with general financial literacy revised core standards and objectives; and
 - (3) be measured and analyzed at the school, district and state-wide levels.

R277-704-5. General Financial Literacy Teacher Endorsement.

- A. Any Board licensed educator who teaches general financial literacy shall have completed course work in:
- (1) financial planning;
 - (2) credit and investing;
 - (3) consumer economics;
 - (4) personal budgeting; and
 - (5) family economics.
- B. Educator course work can be part of or in addition to course work and programs of study required for licensure by the Board consistent with R277-502.

R277-704-6. Financial and Economic Literacy Professional Development Opportunities.

- A. The USOE shall provide professional development for all areas of financial and economic literacy utilizing the expertise of community and business groups.
- B. Professional development activities shall:
- (1) inform public school educators about financial and economic literacy;
 - (2) encourage greater understanding of personal financial and economic responsibility;
 - (3) provide information and resources for teaching about financial and economic literacy without promoting specific

products or businesses; and

(4) work with the USOE to develop messaging or advertising to promote financial and economic literacy.

KEY: financial, economics, literacy

October 9, 2014

Notice of Continuation November 5, 2018

Art X Sec 3

53G-3-505

53E-3-401(4)

R277. Education, Administration.**R277-708. Enhancement for At-Risk Students.****R277-708-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53F-2-410, which directs the Board to manage the Enhancement for At-Risk Students interventions by:

(i) developing a funding formula;

(ii) developing performance criteria;

(iii) supporting LEA implementation of evidence-based interventions;

(iv) distributing the appropriation; and

(v) monitoring and reporting the effectiveness of the evidence-based interventions; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2)(a) The purpose of this rule is to establish criteria and procedures for distributing Enhancement for At-Risk Students funds to LEAs.

(b) The intent of the rule and the legislative appropriation is to improve academic achievement of students who are at risk of academic failure.

R277-708-2. Definitions.

(1) "At-risk of academic failure" means a k-12 public school student who:

(a) scores below proficient on a Board or LEA approved assessment; or

(b) meets an LEA governing board's approved definition of at-risk of academic failure.

(2) "Available funds" means the total funds appropriated for the Enhancement for At-Risk Students interventions, less funding designated for gang prevention under Subsection 53F-2-410(1)(b)(i).

(3) "Chronic absenteeism" means the number of students within an LEA who:

(a) were enrolled in the LEA 60 calendar days or more; and

(b) missed 10% or more days of instruction, whether the absence was excused or not.

(4) "Homeless child" or "homeless youth" means the same as that term is defined in R277-616-2.

(5) "Homelessness" means the number of students within an LEA identified as homeless youth.

(6) "LEA governing board" means:

(a) a charter school governing board; or

(b) a district's local school board.

(7) "LEA share" means the percentage of k-12 students from an LEA who are at risk of academic failure compared to the total count for the state of Utah from the previous school year.

(8) "Limited English Proficiency" or "LEP" means the total number of English learner or "EL" students in an LEA from the October 1 count from the previous school year who received a score of 1-4 on the English language proficiency assessment.

(9) "Low performance on a statewide assessment" means the unduplicated count of k-12 students from an LEA scoring below proficient in Reading/Language, Math, and Science on one of the following exams from the previous school year:

(a) for students in grades 3 through 8, the Readiness Improvement Success Empowerment (RISE) standards assessment;

(b) for students in grades 9 and 10, Utah Aspire;

(c) the Special Education alternate assessment; or

(d) other Board approved assessment.

(10) "Mobility" means the number of k-12 students enrolled less than 160 days or its equivalent in one school within a school year, as determined by the prior year's year-end average daily membership submission.

(11) "Poverty" means the total number of k-12 students in an LEA reported as economically disadvantaged using federal child nutrition income eligibility guidelines for free or reduced-priced under the federal school lunch program from the official October 1 enrollment count from the previous school year.

(12) "Truancy" or "truant student" means a student absent without a valid excuse.

(13) "UTREx System" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(14) "Valid excuse" means the same as that term is defined in Section 53G-6-201.

R277-708-3. Allocation of Enhancement for At-Risk Student Funds.

(1) The Superintendent shall base an LEA's allocation on the certified data from the UTREx System using the most recent school year for which data is complete and available.

(2) The Superintendent shall use the following funding formula to determine an LEA base to distribute to LEAs:

(a) the Superintendent shall annually calculate 4% of the state appropriation of the Enhancement for At-Risk Students funding available for LEA grants to provide a base amount to LEAs.

(b) The Superintendent shall divide the base amount described in Subsection (2)(a) equally among all eligible LEAs.

(3) The Superintendent shall annually calculate 20% of the state appropriation of the Enhancement for At-Risk Students on a per school basis to provide a targeted amount to LEAs with traditional elementary schools, secondary schools, and alternative high schools with at least 75% poverty.

(4)(a) Subject to Subsection (4)(b), the Superintendent shall award remaining funds to an LEA based on the LEA's number of students who meet any of the following criteria:

(i) low performance on a Board approved assessment;

(ii) poverty;

(iii) mobility;

(iv) limited English Proficiency;

(v) chronic absenteeism; and

(vi) homelessness.

(b) When counting the number of students within an LEA who meet the criteria described in Subsection (4)(a), the Superintendent shall:

(i) for a student who meets one criterion, count the student once; and

(ii) for a student who meets more than one criterion, count the student for each criterion the student meets, up to three criteria.

(5) The Superintendent shall notify an LEA that qualifies for funding of the LEA's level of funding annually by May 1.

R277-708-4. Fiscal Procedures.

(1) An LEA shall submit its application to the Superintendent annually by November 1 through the Board's grant management system.

(2) The Superintendent shall distribute available funds to LEAs with an approved application monthly based on a one-twelfth distribution beginning on July 1.

(3) Except as provided in Subsection (5)(a), an LEA shall spend all allocated funds annually by June 30.

(4) An LEA that accepts funds for Enhancement for At-Risk Students intervention services shall be subject to Board accounting, auditing, and budgeting rules and policies.

(5)(a) With written approval from the Superintendent, an LEA may carry over and spend up to ten percent of state Enhancement for At-Risk Student funds in the next fiscal year.

(b) An LEA shall submit a request to carry over funds under Subsection (5)(a) to the Superintendent annually.

(c) An LEA shall detail approved carry over amounts in a revised budget submitted with the LEA's application described in Subsection (1) and through the Board's grant management system.

(d) The Superintendent shall review and approve a revised budget submitted under Subsection (5)(c) no later than December 1 in the year submitted.

R277-708-5. Application Process.

(1) An LEA may use funds for activities that support academic achievement of students who are at risk of academic failure, including addressing truancy.

(2) An LEA shall establish the following to include in the LEA's application for Enhancement for At-Risk Student money:

(a) supporting the specific measurable goals aligned to the growth goals in the state accountability system, including a baseline measurement, related to increased academic achievement of students at-risk of academic failure;

(b) a copy of the LEA's comprehensive plan for student and classroom management, and school discipline required in Section R277-609-4; and

(c) if the LEA establishes an LEA specific definition of a student at-risk of academic failure as described in Subsection R277-708-2(1)(b), the LEA governing board's approved definition of a student at-risk of academic failure.

(3) Annually, an LEA shall provide the following information to the Superintendent:

(a) a report of the LEA's use of funds through the annual financial reporting process;

(b) the LEA's outcome data related to the specific measurable goals included in the LEA's application; and

(c) a report of intervention effectiveness based on performance criteria defined by the Superintendent.

R277-708-6. Oversight: Monitoring, Evaluation and Reports.

(1)(a) The Superintendent shall conduct tri-annual intervention reviews of each LEA receiving Enhancement for At-Risk Students funding to ensure intervention compliance.

(b) In the Superintendent's discretion or for good cause, the Superintendent may conduct additional formal or informal:

(i) monitoring;

(ii) reviews; or

(iii) site visits.

(2) If the Superintendent identifies violations as a result of a review described in Subsection (1)(a), an LEA shall prepare and submit to the Superintendent a written corrective action plan for each finding made by the Superintendent.

(3) If an LEA fails to resolve findings identified by the Superintendent under Subsection (2), the Superintendent may implement corrective action as provided in R277-114.

R277-708-7. Gang Prevention and Intervention Funds.

(1) Consistent with Subsection 53F-2-410(1)(b), the Superintendent shall distribute funding to LEAs for gang prevention and intervention.

(2) An LEA desiring to receive gang prevention and intervention funds shall submit a proposal consistent with Rule R277-436.

KEY: students at risk

November 7, 2018

Notice of Continuation September 15, 2016

Art X Sec 3

53F-2-410

53E-3-401(4)

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.

"Coating" means a material that can be applied to a substrate and which cures to form a continuous solid film for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, caulks, maskants, inks, and temporary protective coatings.

"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.

"Composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOCs.

"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.

(1) Specifically, Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursors to PM2.5 in any PM2.5 nonattainment area, except where the Administrator of the EPA has approved a demonstration satisfying 40 CFR 51.1006(a)(3) which has, for a particular PM2.5 nonattainment area, determined otherwise.

(2) The following subparagraphs denote specific nonattainment areas (as defined in the July 1, 2017 version of 40 CFR 81.345), within which certain pollutants identified in paragraph (1) are exempted from the definition of PM2.5 precursor for the purposes of 40 CFR 51.165

(a) In the Logan UT-ID PM2.5 nonattainment area - Ammonia is exempted.

"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 or 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 solvers, 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.

"VOC content" means the weight of VOC per volume of material and is calculated by the following equation in gram/liter (or alternately in pound/gallon, or pound/pound):

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}$$

Where:

W_s = weight of volatile organic compounds

W_w = weight of water

W_{es} = weight of exempt compounds

V_m = volume of material

"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, 2017.

KEY: air pollution, definitions

August 2, 2018

Notice of Continuation November 13, 2018

19-2-104(1)(a)

R307. Environmental Quality, Air Quality.**R307-150. Emission Inventories.****R307-150-1. Purpose and General Requirements.**

(1) The purpose of R307-150 is:

(a) to establish by rule the time frame, pollutants, and information that sources must include in inventory submittals; and

(b) to establish consistent reporting requirements for stationary sources in Utah to determine whether sulfur dioxide emissions remain below the sulfur dioxide milestones established in the State Implementation Plan for Regional Haze, section XX.E.1.a, incorporated by reference in R307-110-28.

(2) The requirements of R307-150 replace any annual inventory reporting requirements in approval orders or operating permits issued prior to December 4, 2003.

(3) Emission inventories shall be submitted on or before ninety days following the effective date of this rule and thereafter on or before April 15 of each year following the calendar year for which an inventory is required. The inventory shall be submitted in a format specified by the Division of Air Quality following consultation with each source.

(4) The executive secretary may require at any time a full or partial year inventory upon reasonable notice to affected sources when it is determined that the inventory is necessary to develop a state implementation plan, to assess whether there is a threat to public health or safety or the environment, or to determine whether the source is in compliance with R307.

(5) Recordkeeping Requirements.

(a) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records under R307-150-4 shall be kept for ten years. Other records shall be kept for a period of at least five years from the due date of each inventory.

(b) The owner or operator of the stationary source shall make these records available for inspection by any representative of the Division of Air Quality during normal business hours.

R307-150-2. Definitions.

The following additional definitions apply to R307-150.

"Acute pollutant" means any noncarcinogenic air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Carcinogenic pollutant" means any air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Chronic Pollutant" means any noncarcinogenic 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 in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Dioxins" and "Furans" mean total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

"Emissions unit" means emissions unit as defined in R307-415-3.

"Large Major Source" means a major source that emits or has the potential to emit 2500 tons or more per year of oxides of sulfur, oxides of nitrogen, or carbon monoxide, or that emits or

has the potential to emit 250 tons or more per year of PM₁₀, PM_{2.5}, volatile organic compounds, or ammonia.

"Lead" means elemental lead and the portion of its compounds measured as elemental lead.

"Major Source" means major source as defined in R307-415-3.

R307-150-3. Applicability.

(1) R307-150-4 applies to all stationary sources with actual emissions of 100 tons or more per year of sulfur dioxide in calendar year 2000 or any subsequent year unless exempted in (a) below. Sources subject to R307-150-4 may be subject to other sections of R307-150.

(a) A stationary source that meets the requirements of R307-150-3(1) that has permanently ceased operation is exempt from the requirements of R307-150-4 for all years during which the source did not operate at any time during the year.

(b) Except as provided in R307-150-3(1)(a), any source that meets the criteria of R307-150-3(1) and that emits less than 100 tons per year of sulfur dioxide in any subsequent year shall remain subject to the requirements of R307-150-4 until 2018 or until the first control period under the Western Backstop Sulfur Dioxide Trading Program as established in R307-250-12(1)(a), whichever is earlier.

(2) R307-150-5 applies to large major sources.

(3) R307-150-6 applies to:

(a) each major source that is not a large major source;

(b) each source with the potential to emit 5 tons or more per year of lead; and

(c) each source not included in R307-150-3(2), R307-150-3(3)(a), or R307-150-3(3)(b) that is located in Davis, Salt Lake, Utah, or Weber Counties and that has the potential to emit 25 tons or more per year of any combination of oxides of nitrogen, oxides of sulfur and PM₁₀, or the potential to emit 10 tons or more per year of volatile organic compounds.

(4) R307-150-7 applies to Part 70 sources not included in R307-150-3(2) or R307-150-3(3).

(5) R307-150-9 applies to sources with Standard Industrial Classification codes in the major group 13 that have uncontrolled actual emissions greater than one ton per year for a single pollutant of PM₁₀, PM_{2.5}, oxides of nitrogen, oxides of sulfur, carbon monoxide or volatile organic compounds. These sources include, but are not limited to, industries involved in oil and natural gas exploration, production, and transmission operations; well production facilities; natural gas compressor stations; and natural gas processing plants and commercial oil and gas disposal wells, and ponds.

(a) Sources that require inventory submittals under R307-150-3(1) through R307-150-3(4) are excluded from the requirements of R307-150-9.

R307-150-4. Sulfur Dioxide Milestone Inventory Requirements.

(1) Annual Sulfur Dioxide Emission Report.

(a) Sources identified in R307-150-3(1) shall submit an annual inventory of sulfur dioxide emissions beginning with calendar year 2003 for all emissions units including fugitive emissions.

(b) The inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, type and efficiency of the air pollution control equipment, percent of sulfur content in fuel and how the percent is calculated, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Each source subject to R307-150-4 that is also subject to 40 CFR Part 75 reporting requirements shall submit a summary report of annual sulfur dioxide emissions that were reported to the Environmental Protection Agency under 40 CFR Part 75 in lieu of the reporting requirements in (1) above.

(3) Changes in Emission Measurement Techniques. Each source subject to R307-150-4 that uses a different emission monitoring or calculation method than was used to report their sulfur dioxide emissions in 2006 under R307-150 or 40 CFR Part 75 shall adjust their reported emissions to be comparable to the emission monitoring or calculation method that was used in 2006. The calculations that are used to make this adjustment shall be included with the annual emission report.

R307-150-5. Sources Identified in R307-150-3(2), Large Major Source Inventory Requirements.

(1) Each large major source shall submit an emission inventory annually beginning with calendar year 2002. The inventory shall include PM₁₀, PM_{2.5}, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, and ammonia for all emissions units including fugitive emissions.

(2) For every third year beginning with 2005, the inventory shall also include all other chargeable pollutants and hazardous air pollutants not exempted in R307-150-8.

(3) For each pollutant specified in (1) or (2) above, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, composition of air pollutant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

R307-150-6. Sources Identified in R307-150-3(3).

(1) Each source identified in R307-150-3(3) shall submit an inventory every third year beginning with calendar year 2002 for all emissions units including fugitive emissions.

(a) The inventory shall include PM₁₀, PM_{2.5}, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, ammonia, other chargeable pollutants, and hazardous air pollutants not exempted in R307-150-8.

(b) For each pollutant, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit which is the source of the air pollution, composition of air pollutant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Sources identified in R307-150-3(3) shall submit an inventory for each year after 2002 in which the total amount of PM₁₀, oxides of sulfur, oxides of nitrogen, carbon monoxide, or volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory. For each pollutant, the inventory shall meet the requirements of R307-150-6(1)(a) and (b).

R307-150-7. Sources Identified in R307-150-3(4), Other Part 70 Sources.

(1) Sources identified in R307-150-3(4) shall submit the following emissions inventory every third year beginning with calendar year 2002 for all emission units including fugitive emissions.

(2) Sources identified in R307-150-3(4) shall submit an

inventory for each year after 2002 in which the total amount of PM₁₀, oxides of sulfur, oxides of nitrogen, carbon monoxide, or volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory.

(3) The emission inventory shall include individual pollutant totals of all chargeable pollutants not exempted in R307-150-8.

R307-150-8. Exempted Hazardous Air Pollutants.

(1) The following air pollutants are exempt from this rule if they are emitted in an amount less than that listed in Table 1.

TABLE 1

POLLUTANT	Pounds/year
Arsenic	0.21
Benzene	33.90
Beryllium	0.04
Ethylene oxide	38.23
Formaldehyde	5.83

(2) Hazardous air pollutants, except for dioxins or furans, are exempt from being reported if they are emitted in an amount less than the smaller of the following:

(a) 500 pounds per year; or

(b) for acute pollutants, the applicable TLV-C expressed in milligrams per cubic meter and multiplied by 15.81 to obtain the pounds-per-year threshold; or

(c) for chronic pollutants, the applicable TLV-TWA expressed in milligrams per cubic meter and multiplied by 21.22 to obtain the pounds-per-year threshold; or

(d) for carcinogenic pollutants, the applicable TLV-C or TLV-TWA expressed in milligrams per cubic meter and multiplied by 7.07 to obtain the pounds-per-year threshold.

R307-150-9. Crude Oil and Natural Gas Source Category.

(1) Sources identified in R307-150-3(5) shall submit an inventory every third year beginning with the 2017 calendar year for all emission units.

(a) The inventory shall include the total emissions for PM₁₀, PM_{2.5}, oxides of sulfur, oxides of nitrogen, carbon monoxide and volatile organic compounds for each emission unit at the source. The emissions of a pollutant shall be calculated using the emission unit's actual operating hours, product rates, and types of materials processed, stored, or combusted during the inventoried time period.

(b) The inventory shall include the type and efficiency of air pollution control equipment.

(c) The inventory shall be submitted in an electronic format determined by the Director specific to this source category.

KEY: air pollution, reports, inventories

March 5, 2018

19-2-104(1)(c)

Notice of Continuation November 13, 2018

R307. Environmental Quality, Air Quality.**R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).****R307-405-1. Purpose.**

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

(1) All references to 40 CFR in R307-405 shall mean the version that is in effect on July 1, 2011.

(2) The provisions of 40 CFR 52.21(a)(2) are hereby incorporated by reference.

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2) and (9) below, the definitions contained in 40 CFR 52.21(b) are hereby incorporated by reference.

(2)(a) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(b) "Reviewing Authority" means the director.

(c)(i) The term "Administrator" shall be changed to "director" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

- (A) 40 CFR 52.21(b)(17),
- (B) 40 CFR 52.21(b)(37)(i),
- (C) 40 CFR 52.21(b)(43),
- (D) 40 CFR 52.21(b)(48)(ii)(c),
- (E) 40 CFR 52.21(b)(50)(i),
- (F) 40 CFR 52.21(l)(2),
- (G) 40 CFR 52.21(p)(2), and
- (H) 40 CFR 51.166(q)(2)(iv).

(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21(b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(e) In the definition of "Regulated NSR pollutant" in 40 CFR 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any pollutant that otherwise is subject to regulation under the Act." A new subparagraph (v) shall be added that reads, "The term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the federal Clean Air Act, or added to the list pursuant to section 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the federal Clean Air Act."

(3) "Air Quality Related Values," as used in analyses

under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

(9) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph (d) of this section.

(b) For purposes of paragraphs (c) through (d) of this section, the term "tons per year (tpy) CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96).

(ii) Sum the resultant value from paragraph (b)(i) of this section for each gas to compute a tpy CO₂e.

(c) The term "emissions increase" as used in paragraph (d) of this section shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv) that is incorporated by reference in R307-405-2) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in R307-405-3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in paragraph 40 CFR 52.21(b)(23)(ii).

(d) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more.

R307-405-4. Area Designations.

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

- (a) Arches National Park,
- (b) Bryce Canyon National Park,
- (c) Canyonlands National Park,

- (d) Capitol Reef National Park, and
- (e) Zion National Park.

(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.

- (3) No areas in Utah are designated as Class III.

R307-405-5. Area Redesignation.

Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g), that is hereby incorporated by reference.

R307-405-6. Ambient Air Increments.

The provisions of 40 CFR 52.21(c) are hereby incorporated by reference.

R307-405-7. Ambient Air Ceilings.

The provisions of 40 CFR 52.21(d) are hereby incorporated by reference.

R307-405-8. Exclusions from Increment Consumption.

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not renewable.

(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:

- (a) impact a Class I area or an area where an applicable increment is known to be violated; or
- (b) cause or contribute to a violation of the national

ambient air quality standards.

R307-405-9. Stack Heights.

The provisions of 40 CFR 52.21(h) are hereby incorporated by reference.

R307-405-10. Exemptions.

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5) are hereby incorporated by reference.

R307-405-11. Control Technology Review.

The provisions of 40 CFR 52.21(j) are hereby incorporated by reference.

R307-405-12. Source Impact Analysis.

The provisions of 40 CFR 52.21(k) are hereby incorporated by reference.

R307-405-13. Air Quality Models.

The provisions of 40 CFR 52.21(l) are hereby incorporated by reference.

R307-405-14. Air Quality Analysis.

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii) are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3) are hereby incorporated by reference.

R307-405-15. Source Information.

The provisions of 40 CFR 52.21(n) are hereby incorporated by reference.

R307-405-16. Additional Impact Analysis.

The provisions of 40 CFR 52.21(o) are hereby incorporated by reference.

R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.

(1) The provisions of 40 CFR 52.21(p) are hereby incorporated by reference.

(2) The director will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

R307-405-18. Public Participation.

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2) are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

R307-405-19. Source Obligation.

The provisions of 40 CFR 52.21(r) are hereby incorporated by reference.

R307-405-20. Innovative Control Technology.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v) are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The director shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

R307-405-21. Actuals PALs.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(aa) are hereby incorporated by reference.

(2) (a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "June 16, 2006".

R307-405-22. Banking of Emission Offset Credit in PSD Areas.

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the director must identify them in either the Utah SIP or an order. The director will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

KEY: air pollution, PSD, Class I area, greenhouse gases
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R307. Environmental Quality, Air Quality.**R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions.****R307-840-1. Purpose and Applicability.**

(1) Rule R307-840, R307-841, and R307-842 establish procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities and renovations, and work practice standards for performing such activities. These rules also require that, except as outlined in R307-840-1(2), all lead-based paint activities and renovations, as defined in these rules, must be performed by certified individuals and firms.

(2) R307-840, R307-841, and R307-842 apply to all individuals and firms who are engaged in lead-based paint activities and renovations as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) R307-840, R307-841, and R307-842 identify lead-based paint hazards. The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(4) R307-840, R307-841, and R307-842 do not require the owner of the property or properties subject to these rules to evaluate the property or properties for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.

(5) While R307-840, R307-841, and R307-842 establish specific requirements for performing lead-based paint activities and renovations should they be undertaken, these rules do not require that the owner or occupant undertake any particular lead-based paint activity or renovation.

(6) Individuals or firms wishing to deviate from the certification, notification, work practice, or other requirements of R307-840, R307-841, and/or R307-842 may do so only after requesting and obtaining written approval from the director.

R307-840-2. Definitions.

The following definitions apply to R307-840, R307-841, and R307-842, in addition to the definitions found in R307-101-2.

"Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(a) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(i) Shall result in the permanent elimination of lead-based paint hazards; or

(ii) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(b) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with R307-842-2, unless such projects are covered by paragraph (4) of this definition;

(c) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to State of Utah or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Accredited Training Program" means a training program that has been accredited by the director pursuant to R307-842-1 to provide training for individuals engaged in lead-based paint activities.

"Adequate Quality Control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Arithmetic Mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

"Business Day" means Monday through Friday with the exception of federal and State of Utah holidays.

"Certificate of Mailing" means Certificate of Mailing as defined by the United States Postal Service.

"Certified Abatement Worker" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to perform abatements.

"Certified Dust Sampling Technician" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-841-8(1) and R307-842-2 to collect dust samples.

"Certified Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization that performs lead-based paint activities, renovations, or dust sampling to which the director has issued a certificate of approval pursuant to R307-842-2(5).

"Certified Inspector" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Project Designer" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to prepare abatement project designs, occupant protection plans, and abatement reports.

"Certified Renovator" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-841-8(1) and R307-842-2 to conduct renovations.

"Certified Risk Assessor" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to conduct risk assessments. A risk assessor also samples for the presence of

lead in dust and soil for the purposes of abatement clearance testing.

"Certified Supervisor" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

"Chewable Surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that can not be dented by the bite of a young child are not considered chewable.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

"Cleaning Verification Card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

"Clearance Levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

"Common Area" means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Common Area Group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairways, and laundry rooms.

"Component or Building Component" means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners, and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes

and wells, and air conditioners.

"Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course Agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course Test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course Test Blue Print" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Deteriorated Paint" means any interior or exterior paint or other coating that is flaking, peeling, chipping, chalking, or cracking, or any other paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this rule for which individuals may receive training from accredited programs and become certified by the director. Disciplines include Abatement Worker, Dust Sampling Technician, Inspector, Project Designer, Renovator, Risk Assessor, and Supervisor.

"Distinct Painting History" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented Methodologies" are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Dripline" means the area within 3 feet surrounding the perimeter of the building.

"Dry Disposable Cleaning Cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 ug/ft² on floors or 250 ug/ft² on interior window sills based on wipe samples.

"Elevated Blood Lead Level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 micrograms of lead per deciliter of whole blood (ug/dl) for a single venous test or of 15-19 ug/dl in two consecutive tests taken 3 to 4 months apart.

"Emergency Renovation Operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"EPA" means the United States Environmental Protection Agency.

"Friction Surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to,

certain window, floor, and stair surfaces.

"Guest Instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

"Hands-On Skills Assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in R307-842-1(4), as well as any other skill taught in a training course.

"Hazardous Waste" means any waste as defined in 40 CFR 261.3.

"HEPA Vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

"Housing for the Elderly" means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

"HUD" means the United States Department of Housing and Urban Development.

"Impact Surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Interim Certification" means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from the director pursuant to R307-842-2. Interim certification expires 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

"Interim Controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Interior Window Sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead-Based Paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

"Lead-Based Paint Activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

"Lead-Based Paint Activities Courses" means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

"Lead-Based Paint Hazard" means, for the purposes of lead-based paint activities, any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator of the EPA pursuant to TSCA Section 403, and for the purposes of renovation, means hazardous lead-based paint, dust-lead hazard, or soil-lead hazard as identified in R307-840-2.

"Lead-Hazard Screen" means a limited risk assessment

activity that involves limited paint and dust sampling as described in R307-842-3(3).

"Living Area" means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

"Loading" means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

"Local Government" means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under state law.

"Mid-Yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Minor Repair and Maintenance Activities" are activities, including minor heating, ventilation, or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by R307-841-5(1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Multi-Family Dwelling" means a structure that contains more than one separate residential dwelling unit which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Multi-Family Housing" means a housing property consisting of more than four dwelling units.

"Nonprofit" means an entity which has demonstrated to any branch of the federal government or to a state, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

"Owner" means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

"Paint In Poor Condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas, or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors), or more than 10% of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

"Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust-lead hazard levels identified in the definition of "Dust-lead hazard".

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks

into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

"Painted surface" means a component surface covered in whole or in part with paint or other surface coatings.

"Pamphlet" means the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" developed under Section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of state or local sources of information).

"Permanently Covered Soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Person" means any natural or judicial person including any individual, corporation, partnership, or association, any Indian tribe, state, or political subdivision thereof, any interstate body, and any department, agency, or instrumentality of the federal government.

"Play Area" means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

"Principal Instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized Laboratory" means an environmental laboratory recognized by EPA pursuant to TSCA Section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

"Recognized Test Kit" means a commercially available kit recognized by EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Renovation" means the modification of an existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by R307-840-2. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)), the removal of building components (e.g., walls, ceilings, plumbing, windows), weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this rule. The term renovation does not include minor repair and maintenance activities.

"Renovator" means an individual who either performs or directs workers who perform renovations.

"Residential Building" means a building containing one or more residential dwellings.

"Residential Dwelling" means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Risk Assessment" means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

"Soil Sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

"Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ug/g) in a play area or average 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

"Start Date" means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

"Start Date Provided to the director" means the start date included in the original notification or the most recent start date provided to the director in an updated notification.

"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

"Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601.

"Training Manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

"Training Provider" means any organization or entity accredited under R307-842-1 to offer lead-based paint activities, renovator, or dust sampling technician courses.

"Vertical containment" means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for

some exterior renovations but it may be used on any renovation.

"Visual Inspection for Clearance Testing" means the visual examination of a residential dwelling or a child-occupied facility following abatement to determine whether or not the abatement has been successfully completed.

"Visual Inspection for Risk Assessment" means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

"Weighted Arithmetic Mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 ug/ft², a composite sample (3 subsamples) containing 100 ug/ft², and a composite sample (4 subsamples) containing 110 ug/ft² is 100 ug/ft². This result is based on the equation $(60+(3*100)+(4*110))/(1+3+4)$.

"Wet Disposable Cleaning Cloth" means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet Mopping System" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Window Trough" means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

"Wipe Sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques", or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

"Work Area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

"0-Bedroom Dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

**KEY: definitions, paint, lead-based paint
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19-2-104(1)(i)

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**R315-301. Solid Waste Authority, Definitions, and General Requirements.****R315-301-1. Authority and Purpose.**

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos waste" means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I Landfill" means a non-commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(a)(iii) and is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10; and

(b) does not meet the standards of Subsection R315-303-3(3)(e)(v).

(8) "Class II Landfill" means a non-commercial landfill or a landfill that is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other

nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10.

(b) meets the standards of Subsection R315-303-3(3)(e)(v).

(9) "Class III Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3; and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the Director to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste, excluding waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2); and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) A Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction/demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(i) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

(13) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(14) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(15) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic

flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit (60 degrees Celsius), or higher, for at least some part of each day of a consecutive seven day period, to a state in which the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10, that may be generated by these operations.

(a) Such waste may include:

- (i) concrete, bricks, and other masonry materials;
- (ii) soil and rock;
- (iii) waste asphalt;
- (iv) rebar contained in concrete; and
- (v) untreated wood, and tree stumps.

(b) Construction/demolition waste does not include:

- (i) friable asbestos;
- (ii) treated wood; or
- (iii) contaminated soils or tanks resulting from remediation or clean-up at any release or spill.

(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil that is a result of human activity.

(19) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

(20) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(21) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(22) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through 320 by the Director; and

(b) received final approval to accept waste as required by Subsection R315-301-5(1).

(23) "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the current permit under which the facility is operating.

(24) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of these.

(25) "Floodplain" means the land that has been or may be

hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

(27) "Garbage" means discarded animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(28) "Ground water" means subsurface water that is in the zone of saturation including perched ground water.

(29) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(30) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-261-3.

(31) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(32) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(33) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(34) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of solid waste for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Rule R315-15.

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemical industries; food and related products or by-products industries; inorganic chemical industries; iron and steel manufacturing; leather and leather product industries; nonferrous metals manufacturing or foundry industries; organic chemical industries; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic product industries; stone, glass, clay, and concrete product industries; textile manufacturing; transportation equipment manufacturing; and water treatment industries. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(18)(b).

(36) "Industrial solid waste facility" means a facility that receives only industrial solid waste from on-site or off-site sources for disposal.

(37) "Inert waste" means noncombustible, nonhazardous solid wastes that retain their physical and chemical structure

under expected conditions of disposal, including wastes that exhibit resistance to biological or chemical change.

(38) "Landfill" means a disposal facility where solid waste is or has been placed in or on the land and that is not a land treatment facility or surface impoundment.

(39) "Land treatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current permit under which the facility is operating; or

(c) any horizontal expansion not consistent with past normal operating practices.

(41) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(42) "Leachate" means a liquid that has passed through or emerged from solid waste and that may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(43) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(44) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(47) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and non-hazardous sludge.

(48) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through 320 by the Director;

(b) did not have a permit or other valid approval issued under Rules R315-301 through 320 at the time of the application; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

(49) "Off site" means any site which is not on site.

(50) "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(51) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

(53) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(54) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(55) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(58) "Putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

(59) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(60) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returning to a waste stream or being otherwise disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(61) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(62) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(63) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(64) "Scavenging" means the unauthorized removal of solid waste from a facility.

(65) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(66) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(67) "Sharps" means any discarded or contaminated article

or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(68) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

- (a) municipal, commercial, or industrial waste water treatment plant;
- (b) water supply treatment plant;
- (c) car wash facility;
- (d) air pollution control facility; or
- (e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a landfill, incinerator, or land treatment area.

(70) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

- (a) Special waste may include:
 - (i) ash;
 - (ii) automobile bodies;
 - (iii) furniture and appliances;
 - (iv) infectious waste;
 - (v) waste tires;
 - (vi) dead animals;
 - (vii) asbestos;
 - (viii) waste exempt from the hazardous waste regulations under Section R315-261-4;
 - (ix) very small quantity generator hazardous waste as defined by Section R315-260-10;
 - (x) waste containing PCBs;
 - (xi) petroleum contaminated soils;
 - (xii) waste asphalt; and
 - (xiii) sludge.

(b) Special waste must be handled and disposed according to the requirements of Rule R315-315.

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

(73) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(76) "Transport vehicle" means a vehicle capable of hauling solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(77) "Treated wood" means any wood item that has been treated with the following or compounds containing the

following:

- (a) creosote or related compounds;
- (b) Arsenic;
- (c) Chromium; or
- (d) Copper.

(78) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(79) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains all features to render it capable of performing its intended function and of being closed as a separate entity.

(80) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(81) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(82) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(83) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(84) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(85) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

- (a) A waste tire storage facility includes:
 - (i) whole waste tires used as a fence;
 - (ii) whole waste tires used as a windbreak; and
 - (iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

- (i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(86) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(87) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of

facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules.

(2) When any solid waste is disposed in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, the property owner of the disposal site or the person responsible for the illegal disposal or both:

(a) shall remove the solid waste from the illegal disposal site to a permitted solid waste disposal facility and, if necessary, shall remediate the site; or

(b) shall apply for a permit from the Director and shall meet all of the following:

(i) submit the required permit application in the time frame specified by the Director and respond promptly to all requests for information from the Director related to the permit application;

(ii) shall immediately meet all of the operational monitoring and waste handling criteria of Rules R315-301 through 320; and

(iii) shall follow the requirements of Rule R315-301-4(2)(a) if a permit is not granted.

(3) Any person disposing of solid waste in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, may be subject to enforcement action in addition to meeting the requirements of Rule R315-301-4(2).

(4) When deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through 320 do not apply to:

- (a) inert waste used as fill material;
- (b) the disposal of mine tailings and overburden;
- (c) the disposal of vegetative material generated as a result of land clearing; or
- (d) the disposal of vegetative agricultural waste.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be established, operated, maintained, or expanded until the owner or operator of such facility has obtained a permit from the Director and has received a letter of approval from the Director to accept waste.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal, by burial, of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste

which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

R315-301-7. Self-Inspection of Solid Waste Management Facility.

(1) Authority. This section is authorized by Section 19-6-109.

(2) Purpose. The purpose of this section is to set standards for the owner or operator of a solid waste management facility who elects to conduct self-inspections of the facility and to set qualification requirements for a person who performs self-inspections.

(3) Definitions. Terms used in this section are defined in Section 19-6-102 and Section R315-301-2.

(a) In addition, the following definitions apply:

(i) "Self-inspection" means an inspection conducted by an employee or authorized representative of the owner or operator of a solid waste management facility to determine compliance with the permit, plan of operation or applicable solid waste rules.

(ii) "Training Program" means the program conducted by the Director or an authorized representative to ensure that the owner or operator's self-inspections are sufficient to evaluate compliance with the owner or operator's permit, plan of operation or applicable rules.

(iii) "Certificate" means the document issued by the Director certifying that the owner or operator, or an authorized representative, has completed the required training and is eligible to conduct self-inspections under this section.

(4) Notification.

(a) An owner or operator of a solid waste management facility may elect to self-inspect the owner or operator's solid waste management facility. The owner or operator shall provide a written notification to the Director by December 1 of the intent to self-inspect during the next calendar year.

(b) The yearly notification of Subsection R315-301-7(4)(a) shall identify the individual(s) who will be conducting self-inspections under this section.

(5) Training.

(a) Prior to conducting self-inspections, each owner or operator, or an authorized representative, shall complete the training program prescribed by the Director.

(b) Upon completion of the training, the Director shall issue a certificate to each person who completes the training.

(c) No person shall conduct a solid waste management facility self-inspection under this section before receiving a certificate to conduct a self-inspection.

(6) Inspections.

(a) The owner or operator shall inspect the facility at least annually to determine compliance with all the conditions of the permit, plan of operation or applicable solid waste rules.

(b) The owner or operator shall document each inspection using the inspection form prescribed by the Director.

(c) The owner or operator shall submit the inspection form to the Director in an electronic format prescribed by the Director.

(d) The owner or operator shall submit the inspection form to the Director within 30 days after the date of inspection.

(e) The owner or operator shall include a copy of the completed inspection form in the facility operating record.

(f) The Division may inspect a facility conducting self-inspections to ensure compliance with this section.

(7) Suspension or Revocation of Self-Inspection Privileges.

(a) The Director may determine that, upon a severe violation by an owner or operator of Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, a rule made by the board, the permit or plan of operation, an owner or operator is temporarily or permanently ineligible to conduct self-inspections under this

section.

KEY: self-inspections, solid waste management, solid waste disposal

November 9, 2018

19-6-105

Notice of Continuation January 12, 2018

19-6-108

19-6-109

40 CFR 258

R382. Health, Children's Health Insurance Program.**R382-3. Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program.****R382-3-1. Introduction and Authority.**

(1) This rule is established under the authority of Section 26-40-103.

(2) The purpose of this rule is to establish provisions governing Accountable Care Organization (ACO) performance measures for the reduction of non-emergent use of emergency departments by beneficiaries in the Children's Health Insurance Program (CHIP).

R382-3-2. Definitions.

(1) "CHIP Beneficiary" means a child under the age of 19 who is eligible for the Children's Health Insurance Program under Title XXI of the Social Security Act as adopted in the state under Title 26, Chapter 40.

(2) "Non-emergent medical condition" means a medical condition that does not meet the criteria of an emergency medical condition under 42 U.S.C. 1395dd (e) of the Emergency Medical Treatment and Active Labor Act.

(3) "Non-emergent medical care" means:

(a) Medical care provided in an emergency room for the treatment of a non-emergent medical condition.

(4) "Non-emergent medical care" does not mean:

(a) Medical services necessary to conduct a medical screening examination to determine if the CHIP beneficiary has an emergent or non-emergent medical condition; and

(b) Medical care provided to a CHIP beneficiary who, using a prudent layperson standard, reasonably believes he is experiencing an "emergency medical condition" as defined by 42 U.S.C. 1395dd(e) of the Emergency Medical Treatment and Active Labor Act.

R382-3-3. Performance Measures.

(1) An ACO that contracts with the Department to provide services to CHIP beneficiaries shall report the following information to the Department in accordance with the terms of its contract:

(a) Emergency room visits with low acuity CPT codes 99281 or 99282;

(b) Actions the ACO takes to expand primary care and urgent care for CHIP beneficiaries who are enrolled in the Accountable Care Plan;

(c) Actions the ACO takes to implement emergency room diversion plans that include:

(i) Weekday, evening and weekend access to primary care providers and community health centers for CHIP beneficiaries and

(ii) Other innovations for expanding access to primary care.

(d) Other quality of care for CHIP beneficiaries who are enrolled in an ACO as required by the Department.

KEY: children's health benefits**January 13, 2014****Notice of Continuation November 14, 2018****26-1-5****26-40-103****26-18-408**

R392. Health, Disease Control and Prevention, Environmental Services.**R392-800. General Sanitation in Public Places.****R392-800-1. Authority and Purpose.**

(1) This rule is authorized under Sections 26-1-5, 26-1-30(9), 26-1-30(23), 26-7-1, and 26-15-2.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of public places, as defined, and provides for the prevention and control of health hazards associated with public places that are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

R392-800-2. Applicability.

(1) Unless exempted in Subsection R392-800-2(2), this rule applies to any person who owns or operates a facility or place listed in Subsection 26-1-30(23) or Section 26-15-2 that is made available for public use. This rule applies to the repair, maintenance, and operation of public places as defined by this rule.

(2) This rule does not apply to:

- (a) a private residence or its premises;
- (b) a publicly or privately owned property that is not operated or intended for public use; or
- (c) a facility, institution, location, or place whose primary purpose or intent is already regulated by another rule promulgated by the Department under Title R392.

R392-800-3. Definitions.

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

- (1) "Department" means the Utah Department of Health.
- (2) "Imminent Health Hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission, pest infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.
- (3) "Local health department" has the same meaning as provided in Section 26A-1-102(5).
- (4) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.
- (5) "Nuisance" means a condition or hazard, or the source thereof, which may be deleterious or detrimental to the health, safety, or welfare of the public.
- (6) "Operator" means a person with ownership or overall responsibility for managing or operating a public place.
- (7) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use which threatens the public health or well being of the people within the state.
- (8) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.
- (9) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises.
- (10) "Premises" means any lot, parcel, or plot of land, including any buildings or structure.
- (11)(a) "Public place" means a place, facility, or location listed in Section 26-15-2 or Subsection 26-1-30(23) which may be an indoor or outdoor area, whether privately or publicly owned, to which persons not employed at the place have general and regular access by right or by invitation, expressed or implied, whether by payment of money or not, including:
 - (i) orphanages;

- (ii) boarding homes;
- (iii) factories;
- (iv) workshops;
- (v) private sanatoria;
- (vi) physician and dentist offices, including waiting rooms;
- (vii) public conveyances and terminals;
- (viii) public baths, including saunas;
- (ix) public bathing beaches;
- (x) amusement parks;
- (xi) public parks and green space;
- (xii) service stations; and
- (xiii) state, county, or municipal institutions, including hospitals.

(b) A public place may also include public buildings and grounds, as well as centers and places used for public gatherings such as auditoriums, theaters, libraries, museums, concert halls, indoor arenas, and meeting rooms.

(c) A public place is not a place used exclusively by one or more individuals for a private gathering or other personal purpose.

(12) "Sanitary" means the condition of being free from infective, physically hurtful, diseased, poisonous, or otherwise unhealthful substances and being free from vectors and pests and from the traces of either, and free of harborage for vectors or pests.

(13) "Toilet fixture" means:

- (a) a water flush toilet that discharges to a public sanitary sewer system or an approved onsite wastewater disposal system;
- (b) a privy seat in a vault privy; or
- (c) a chemical toilet in a portable restroom.

(14) "Vault privy" means a toilet facility wherein the waste is deposited without flushing into a permanently installed, watertight vault or receptacle. Vault wastes is periodically removed and disposed of in accordance with Rule R317-560.

(15) "Vector" means any organism, such as insects or rodents, that transmits a pathogen that can affect public health.

(16) "Wastewater" means discharges from all plumbing facilities including rest rooms, kitchen, and laundry fixtures either separately or in combination.

R392-800-4. General Health and Sanitation Requirements.

(1) A public place shall be maintained sanitary and free of imminent health hazards.

(2) The operator shall prevent any leaking or defective water pipe, sewer pipe, hydrant, sprinkler systems, well, gutter, drain, rain-gutter, or any seepage in or about any public building or structure from creating a nuisance or public health hazard.

(3)(a) The operator shall effectively secure or make safe any vacant building, structure, storage tank, machinery, vehicle, trench, pit, shaft, or well;

(b) The operator shall remove any other deleterious object, condition, or material that is a nuisance or imminent health hazard.

(c) When a local health officer has identified a vacant public place as posing an imminent health hazard, the operator shall remediate the health hazard within a period indicated by the local health officer.

(4) The operator may be required to abate a pest infestation. All abatement activities shall be in compliance with Title 4, Chapter 14, Utah Pesticide Control Act.

(5) A person shall not demolish any infested building or structure unless provisions are made and carried out to abate pest infestations prior to demolition.

(6) The operator shall drain, make drainage possible, or employ other acceptable methods to prevent the pooling of water that may become a breeding place for mosquitoes or other vectors.

(7) The operator shall not store materials in a way that allows the accumulation of water that may become a breeding

place for mosquitoes or attract other vectors.

R392-800-5. Water Supply Requirements.

(1) When an operator supplies potable drinking water for public use, the potable water supply system shall be designed, installed, and operated according to the requirements set forth by:

- (a) Plumbing Code;
- (b) the Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and
- (c) local health department regulations.

(2) Any plumbing fixture provided by the operator that normally requires water for its operation shall have an adequate potable water supply under pressure.

R392-800-6. Wastewater Disposal Requirements.

(1) When sewer systems are made available for use by the public, the operator shall ensure that sewer services are designed, installed, and operated according to the requirements set forth by:

- (a) Plumbing Code;
- (b) The Utah Department of Environmental Quality, Division of Water Quality under Title R317-4;
- (c) local health department regulations; and
- (d) the local sewer district having jurisdiction.

(2) The operator shall not discharge, allow the discharge, or allow the existence of any wastewater, or liquid waste into or on any premises.

(3) All wastewater shall be discharged to a public sanitary sewer system whenever practicable.

(4) Where connection to a public sanitary sewer is not practicable, wastewater shall be discharged to:

- (a) an approved onsite wastewater disposal system; or
- (b) a vault privy which shall be located, constructed, and maintained according to the requirements of Rule R317-560 and local health department regulation in such a manner that:
 - (i) users do not contact waste matter deposited;
 - (ii) access to the vault privy interior or vault is minimized for flies, insects, rats, and other animals;
 - (iii) surface or ground water cannot enter the vault, either as runoff or as flood water;
 - (iv) the waste material in the vault privy cannot contaminate a water supply, stream, or body of water; and
 - (v) odors are minimized both inside and outside the vault privy structure.

(5) The operator shall submit all required plans for the construction or alteration of an onsite wastewater disposal system in accordance with Title R317.

R392-800-7. Solid Wastes.

(1) The operator shall provide adequate containers conveniently located on the premises to contain litter and other solid waste and to prevent the accumulation of solid waste in or around the public place or premises.

(2) Any solid waste that may create a nuisance or imminent health hazard that is generated at a public place and stored on its exterior premises shall be stored in a leak-proof, non-absorbent container with a tight-fitting lid that shall be kept closed at all times except when placing waste in or emptying waste from the container.

(3) All solid wastes shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent harborage, or nuisance.

(4) No person shall accumulate solid waste, or cause or allow any person to accumulate solid waste in any public place except for:

- (a) waste properly disposed in containers meeting Subsection R392-800-7(2); or
- (b) Solid waste temporarily accumulated as approved by

the local health officer.

(5) Compost may be maintained in a public place if:

(a) The compost is located and maintained in a defined space and managed in a way that prevents the spread of disease, the propagation or harborage of insects or rodents, the creation of any nuisance, offensive odor at the property line, or any other condition that might adversely affect public health.

(6) An operator shall not sweep or place solid waste from sidewalks, steps, or other locations into streets.

(7) Solid waste too large or otherwise unsuitable for disposal containers may be stored temporarily on the premises of a public place if the solid waste storage does not create a health or safety hazard, nuisance, or rodent harborage.

(8) Solid waste storage areas located indoors shall be rodent and insect proof, adequately ventilated, easily cleanable, properly drained, and maintained to prevent any nuisance or unsanitary conditions.

(9) Solid waste containers shall be placed where they do not create adverse health or nuisance conditions.

R392-800-8. Maintenance Requirements.

(1) The operator shall maintain all buildings, rooms, equipment, and the premises in a sanitary condition, free of an imminent health hazard.

(2) Where necessary, all reasonable means shall be employed to eliminate or control infestations of vectors or pests within a public place. This shall include approved screening or other approved control of outside openings in structures.

R392-800-9. Operation Requirements.

(1) When an operator provides plumbing fixtures as described in Subsection R392-800-5(2), the operator shall supply in each toilet room:

- (a) handwashing facilities;
- (b) soap and toilet tissue in suitable dispensers;
- (c) individual disposable towels or other approved hand drying facilities; and
- (d) a solid, durable, and easily cleanable waste receptacle.

(2) Any toilet fixture or privy provided for or used by the public or employees shall be maintained clean, sanitary, and in good repair.

(3) When a vault privy is provided for patron use as described in Subsection R392-800-6(4)(b), and potable water is not plumbed, connected, or supplied to the toilet room, the operator shall supply in each toilet room:

- (a) a solid, durable, and easily cleanable waste receptacle; and
- (b) toilet tissue in a suitable dispenser.

R392-800-10. Inspections and Investigations.

Upon presenting proper identification, the operator shall permit a local health officer to enter the public place or premises to perform inspections, investigations, and other actions as necessary to ensure compliance with Rule R392-800.

R392-800-11. Closing or Restricting of a Public Place.

(1) If a local health officer deems a public place or portion thereof to be an imminent health hazard, the public place may be closed or its use may be restricted, as determined by the local health officer.

(2) The operator shall restrict public access to the impacted area of any public place closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) It shall be unlawful for an operator to allow the public to utilize any public place or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

**KEY: public places, public restrooms, public health, general
sanitation
November 14, 2018**

26-1-5
26-1-30(9)
26-1-30(23)
26-7-1
26-15-2

R414. Health, Health Care Financing, Coverage and Reimbursement.**R414-1B. Payment for Limited Abortion Services.****R414-1B-1. Introduction and Authority.**

This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in the Hyde Amendment Codification Act, 42 CFR 441, Subpart E, and Section 76-7-331. This rule is authorized by Section 26-1-5 and Section 26-18-3.

R414-1B-2. Definitions.

(1) "Abortion billing code" means those codes used to bill for services that are directly or indirectly related to an abortion and are found in the current editions of the:

(a) Current Procedural Terminology (CPT) manual of the American Medical Association; and

(b) International Classification of Diseases (ICD): Clinical Modification, or Procedural Coding System (PCS).

(2) "Certification" or "Certify" means submitting to the Division of Medicaid and Health Financing, Utah Department of Health, a Department-approved document signed by one authorized to act on behalf of a Medicaid provider.

(3) "Public funds" means money of the state, its institutions or its political subdivisions used to pay or otherwise reimburse a person, agency, or facility and money received under Title XIX of the federal Social Security Act. "Public funds" does not include (i) clinical revenue generated from nongovernmental payors; or (ii) gift or donor funds from third party nongovernmental sources.

(4) "Services" means all covered services reimbursable under the Medicaid State Plan and that are limited by federal guidelines set forth by the federal Social Security Act, Title 42 of the Code of Federal Regulations, Section R414-1-5, and Utah Medicaid Provider Manuals.

R414-1B-3. Certification.

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004, must certify that public funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life and all requirements of 42 CFR 441, Subpart E have been satisfied; or

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation.

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

R414-1B-4. Standards for Certification.

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in Section 76-7-331 and to assess whether it receives public funds for any abortion that is not excepted in Subsection 76-7-331(2)(a) or (b).

(2) A provider is not using public funds to directly or indirectly fund prohibited abortion services if the provider certifies:

(a) it uses non-public funds to make up any difference between the reimbursement the provider receives from all payors for services identified by abortion billing codes, other than those services identified in Subsection R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) the provider has adopted another method, based on generally accepted accounting principles, which provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

R414-1B-5. Prohibition of Payment for Certain Abortions with Medicaid Funds.

(1) A Medicaid provider may not use Medicaid funds for the abortion billing codes referenced in Section R414-1B-2 unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life and all requirements of 42 CFR 441, Subpart E have been satisfied;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation.

(2) A Medicaid provider may not construe the certification requirements of Section R414-1B-3 to mean that Medicaid may reimburse for an abortion billing code beyond the exceptions listed in Subsection R414-1B-5(1)(a) and (b).

**KEY: Medicaid, abortion, physicians, hospitals
July 1, 2015**

Notice of Continuation November 15, 2018

**26-1-5
26-18-3
76-7-331**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-11. Podiatric Services.

R414-11-1. Introduction.

The Podiatric Services program provides a scope of services for Medicaid recipients in accordance with the Podiatric Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid

January 13, 2015

26-1-5

Notice of Continuation November 15, 2018

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

Notice of Continuation November 7, 2018

26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-54. Speech-Language Pathology Services.****R414-54-1. Introduction.**

The Speech-Language Pathology Services program provides a scope of services for Medicaid recipients in accordance with the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, speech-language pathology services

August 26, 2014

26-1-5

Notice of Continuation November 14, 2018

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-90. Diabetes Self-Management Training.****R414-90-1. Introduction and Authority.**

Diabetes self-management training is an educational program that teaches individuals how to successfully manage and control diabetes. Diabetes self-management training is a component of the Utah Medicaid State Plan and is authorized by 42 CFR 440.130 and Section 26-18-3.

R414-90-2. Client Eligibility Requirements.

Diabetes self-management training is available to Traditional Medicaid clients, Non-Traditional Medicaid clients, and Primary Care Network (PCN) clients who are diabetic and receive a physician referral for services.

R414-90-3. Program Access Requirements.

(1) Diabetes self-management training is limited to services approved by a physician, under a comprehensive plan that is essential to ensure successful diabetes self management by the individual patient.

(2) Qualified providers for the diabetes self-management training program include registered nurses, registered pharmacists and certified dietitians licensed by the state. These providers are required to be certified or recognized by the American Association of Diabetes Educators (AADE) or approved through the Utah Department of Health as diabetes instructors.

(3) Diabetes self-management training services provided by a home health agency, may only be provided by a licensed health care provider who is certified by an American Diabetes Association (ADA) program or approved through the Utah Department of Health.

(4) Home Health Agency participation in diabetes self-management training is limited to providing services to the patient who is receiving other skilled services in the home based on physician order and plan of care, when the home is the most appropriate site for the care provided.

R414-90-4. Service Coverage.

(1) Patient assessment for the diabetes self-management program includes a review of medical history, risk factors, health status, resource utilization, knowledge and skill level, and cultural barriers to effective diabetes self-management.

(2) Diabetes self-management training is limited to a maximum of 10 hours of outpatient services.

(3) Diabetes self-management training is limited to training presented by a certified program that meets all of the standards of the National Diabetes Advisory Board covering the 15 ADA core curriculum content areas. The program must also be recognized by the American Association of Diabetes Educators or be certified by the Utah Department of Health.

(4) Diabetes self-management training includes group sessions, but must allow for direct, face to face interaction between the educator and the patient.

(5) Diabetes self-management training must be sufficient in length to meet the goals of the basic comprehensive plan of care. Individual sessions must be sufficient in number and designed to meet the individual's cultural and learning needs.

(6) A maximum of 10 sessions per year may be approved by a physician and through prior authorization.

(7) Repeating any or all of a diabetes self-management program is limited to new conditions or a change in the health status of the client that warrants the need for new training.

(8) The following services are also covered:

(a) annual eye examination that includes dilation;

(b) annual physical;

(c) glycosylated hemoglobin laboratory test with foot examination;

(d) blood sugar review; and

(e) blood pressure reading every 3 to 4 months.

(9) Diabetes self-management training does not cover charges for facility use.

R414-90-5. Reimbursement.

Medicaid payments for approved diabetes self-management training are based on the established Medicaid fee schedule, unless a lower amount is billed. The fee schedule was established after internal and external consultation with diabetes experts. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid

January 19, 2005

Notice of Continuation November 15, 2018

26-1-5

26-18-3

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 \$23.04 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 \$9.71 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, 2018****Notice of Continuation November 15, 2018****26-1-30****26-35a****26-18-3**

R426. Health, Family Health and Preparedness, Emergency Medical Services.**R426-5. Emergency Medical Services Training, Certification, and Licensing Standards.****R426-5-100. Authority and Purpose.**

(1) This rule is established under to provide uniform minimum standards to be met by those providing emergency medical services in the State of Utah; and for the training, certification, and licensing of individuals who provide emergency medical service and for those providing instructions and training to pre-hospital emergency medical care providers.

R426-5-200. Scope of Practice.

(1) The Department may license an individual as an EMR, EMT, AEMT, EMT-IA Paramedic, or EMD who meets the requirements in this rule.

(2) The Committee adopts as the standard for EMR, EMT, AEMT, EMT-IA, or Paramedic training and competency in the state, the United States Department of Transportation's National Emergency Medical Services Education Standards.

(3) An EMR, EMT, AEMT, or Paramedic may perform the skills as described in the EMS National Education Standards, to their level of licensure, as adopted in this section.

R426-5-300. EMS Individual Licensure for EMR, EMT, AEMT, EMT-IA, and Paramedic.

(1) The Department may license an EMR, EMT, EMT-IA, AEMT, or Paramedic for a two-year period.

(2) An individual who wishes to become licensed as a EMR, EMT, AEMT, EMT-IA, or Paramedic shall:

(a) successfully complete a Department-approved EMR, EMT, AEMT, EMT-IA, or Paramedic course as described in this rule;

(b) be able to perform the functions listed in the National EMS Education Standards adopted in this rule as verified by personal attestation and successful accomplishment by certified EMS Instructors during the course;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for an EMR, EMT, AEMT, EMT-IA, or Paramedic certification;

(d) submit the applicable fees and a completed application, including social security number, to the Department;

(e) submit to and pass a background investigation, including an FBI background investigation;

(f) retain documentation of having completed a Department approved CPR course within the prior two years that is consistent with the most current American Heart Association Guidelines for the level of Healthcare Cardiopulmonary Resuscitation (CPR) and Emergency Cardiac Care (ECC) Basic Life Support (BLS); and

(g) retain TB test results.

(3) Age requirements:

(a) EMR may certify at 16 years of age or older; and

(b) EMT, AEMT, EMT-IA and Paramedic may certify at 18 years of age or older.

(4) Within two years after the official course end date the applicant shall successfully complete the Department's approved National Registry of Emergency Medical Technician's written and practical EMR, EMT, AEMT, EMT-IA, or Paramedic examinations, or reexaminations, if necessary.

(5) Licensed personnel shall retain and submit upon request by the Department any documentation required for licensure.

(6) An individual who wishes to enroll in an AEMT, EMT-IA, or Paramedic course shall have as a minimum a Utah EMT license. This license or other equivalent state license or certification approved by the Department shall remain current

until new license level is obtained.

(7) The Department may extend time limits for an individual who has unusual circumstances or hardships.

R426-5-310. Emergency Medical Dispatcher (EMD) Individual Licensure.

(1) The Department may license an EMD for a two-year period.

(2) An individual who wishes to become licensed as an EMD shall:

(a) successfully complete and become certified in a Department approved EMD protocol system by the system vendor no later than July 1, 2020;

(b) submit to and pass a criminal background investigation and screening clearance;

(c) retain documentation of having completed a Department approved CPR course within the prior two years. CPR training shall be kept current during licensure.

(3) An EMD may be licensed at 18 years of age or older.

R426-5-400. Licensure at a Lower Level.

(1) An individual who has taken a Paramedic course, but has not been recommended for licensure, may request to become licensed at the AEMT levels if:

(a) the paramedic course coordinator submits to the Department a favorable letter of recommendation stating that the individual has successfully obtained the knowledge and skills of the AEMT level as required by this rule; and

(b) the individual successfully completes all other application and testing requirements for an AEMT.

R426-5-500. License Challenges.

(1) The Department may license as an EMT or AEMT; a registered nurse licensed in Utah, a nurse practitioner licensed in Utah, a physician assistant licensed in Utah, or a physician licensed in Utah who:

(a) is able to demonstrate knowledge, proficiency and competency to perform all the functions listed in the National EMS Education Standards as verified by personal attestation and successful demonstration to a currently certified course coordinator and an off-line medical director;

(b) has a knowledge of:

(i) medical control protocols;

(ii) state and local protocols; and

(iii) the role and responsibilities of an EMT or AEMT respectively;

(c) maintain and submit documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for adult and Pediatric Healthcare Professional CPR and ECC BLS; and

(d) is 18 years of age or older.

(2) To become licensed, the applicant shall:

(a) submit three letters of recommendation from health care providers attesting to the applicant's patient care skills and abilities;

(b) submit a favorable recommendation from a currently certified course coordinator attesting to competency of knowledge and skills contained within the National EMS Education Standards;

(c) submit the applicable fees and a completed application, including social security number, signature, and, proof of current Utah license as a Registered Nurse, a Physician Assistant, or a Medical Doctor;

(d) successfully complete the Department approved written and practical EMT or AEMT examinations, or reexaminations, if necessary;

(e) submit to and pass a background screening clearance as per R426-5-3100; and

(f) retain a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to submitting the application.

R426-5-600. License Renewal Requirements for EMR, EMT, AEMT, EMT-IA, and Paramedic.

(1) The Department may renew an individual license for a two-year period or for a shorter period as modified by the Department to standardize renewal cycles.

(2) An individual seeking recertification shall:

(a) submit the applicable fees and a completed application, including social security number to the Department;

(b) submit to and pass a background screening clearance as per R426-5-3100;

(c) retain documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Adult and Pediatric Healthcare Professional CPR and ECC BLS. CPR shall be kept current during licensure;

(d) retain TB test results as per R426-5-800; and

(e) provide documentation of completion of Department-approved CME requirements.

(3) The EMR, EMT, AEMT, EMT-IA and Paramedic shall complete the required CME hours, as outlined in the Department's Renewal Protocol for EMS Personnel Manual. The hours shall be completed throughout the prior two years.

(4) The EMR, EMT, AEMT, EMT-IA, or Paramedic shall complete and provide documentation upon request of demonstrating the psychomotor skills listed in the current National EMS Education Standards at their level of licensure.

(5) An EMR, EMT, AEMT, EMT-IA, or Paramedic who is affiliated with a licensed or designated EMS provider shall have the licensed or designated EMS provider's training officer submit a letter verifying the completion of the renewal requirements. An EMR, EMT, AEMT, EMT-IA, or Paramedic who is not affiliated with a licensed or designated EMS provider shall provide upon the request of the Department verification of all renewal requirements directly to the Department.

(6) An AEMT, EMT-IA or Paramedic shall obtain verification from a certified off-line medical director recommending the individual for renewal verifying the individual has demonstrated proficiency in the psychomotor skills listed in the current National EMS Education Standards at their license level.

(7) Individuals are responsible to complete and submit all required renewal material to the Department at one time, no later than 30 days and no earlier than six months prior to the individual's current license expiration date. Renewal material submitted less than 30 days may result in a license expiration. The Department processes renewal material in the order received.

(8) A Department approved entity who provides CME may compile and submit renewal materials on behalf of an EMR, EMT, AEMT, EMT-IA, or Paramedic; however, the individual EMR, EMT, AEMT, EMT-IA, or Paramedic is responsible for a timely and complete submission.

(9) The Department may not lengthen an individual's license period to more than the two-years, unless the individual is a member of the National Guard or reserve component of the armed forces and is on active duty when the license expired.

R426-5-700. License Renewal Requirements for EMD.

(1) The Department may renew an individual license for a two-year period or for a shorter period as modified by the Department to standardize renewal cycles.

(2) An individual seeking renewal shall:

(a) submit the applicable fees and a completed application, including social security number to the Department;

(b) submit to and pass a background screening clearance

as per R426-5-3100;

(c) retain documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Adult and Pediatric Healthcare Professional CPR and ECC BLS. CPR shall be kept current during licensure;

(d) a minimum of a two-hour course in critical incident stress management (CISM);

(e) successfully complete certification in a Department approved EMD protocol system; and

(3) An EMD applying for renewal shall have the communications center supervisor or Department certified training officer of the designated medical dispatch center submit a letter verifying the completion of renewal requirements.

(4) Individuals are responsible to complete and submit all required renewal material to the Department at one time, no later than 30 days and no earlier than one year prior to the individual's current license expiration date. Renewal material submitted less than 30 days may result in license expiration. The Department processes renewal material in the order received.

(5) The Department may shorten an individual's license period.

(6) The Department may not lengthen an individual's license period to more than two years unless the individual is a member of the National Guard or reserve component of the armed forces and was on active duty when their license expired.

R426-5-800. TB Test Requirements for EMR, EMT, AEMT, EMT-IA, and Paramedic Licensure and Renewals.

(1) Individuals applying for a license or the renewal of a license for EMR, EMT, AEMT, EMT-IA, or Paramedic shall be able to provide upon request a statement from a physician or other health care provider, confirming the applicant's negative results of a Tuberculin Skin Test or equivalent (TB test) examination conducted within the prior three years, or complete the following requirements:

(a) if the test is positive, and there is no documented history of prior Latent TB Infection (LTBI) treatment, the applicant shall see his primary care physician for a chest x-ray (CXR) in accordance with current Center for Disease Control and Prevention (CDC) guidelines and further evaluation; and

(b) Results of CXR and medical history shall be submitted to the Department.

(2) If the CXR is negative, the applicant's medical history will be reviewed by the State EMS Medical Director. For individuals at high risk for developing active TB, treatment will be strongly recommended.

(3) If the CXR is positive, the applicant is considered to be suspect Active TB. Should the diagnosis be confirmed:

(a) Completion of treatment or release by an appropriate physician will be required prior to certification; and

(b) each such case will be reviewed by the State EMS Medical Director.

(4) If an applicant who is required to get treatment refuses the treatment, the Department may deny certification.

(5) A TB test should not be performed on a person who has a documented history of either a prior positive TB test or prior treatment for tuberculosis. The applicant shall instead have a CXR in accordance with current CDC guidelines and provide documentation of negative CXR results to the department.

(6) If the applicant has had prior treatment for active TB or LTBI, the applicant shall provide documentation of this treatment prior to certification. Documentation of this treatment will be maintained by the employer or individual if not employed.

(7) Each such case will be reviewed by the State EMS Medical Director.

R426-5-900. Reciprocity for EMR, EMT, AEMT, and Paramedic.

(1) The Department may license an individual as an EMR, EMT, AEMT, or Paramedic who is licensed or certified by another state or certifying body if the applicant can demonstrate the applicant's out-of-state training and experience requirements are equivalent to or greater than what is required in Utah.

(2) An individual seeking reciprocity for licensure in Utah based on out-of-state training and experience shall:

(a) Submit the applicable fees and a completed application, including social security number to the Department and complete all of the following within two years of submitting the application;

(b) submit to and pass a background screening clearance as per R426-5-3100;

(c) retain documentation of having completed a CPR course within the prior two years that is consistent with the most current version of the American Heart Association Guidelines for the level of Healthcare Professional CPR and ECC and BLS. A Paramedic candidate shall also retain documentation of successful completion of ACLS or equivalent. All AMET, EMT-IA, and Paramedic licensed personnel shall retain documentation of PEPP, PALS, or equivalent courses within the prior two years;

(d) retain TB test results as per R426-5-800;

(e) successfully complete the National Registry of Emergency Medical Technician's written and practical EMR, EMT, AEMT, or Paramedic examinations, or reexaminations, if necessary; and

(f) submit a current certification or license from one of the states of the United States or its possessions, or current registration and the name of the training institution if registered with the National Registry of EMTs.

R426-5-1000. Lapsed Licenses.

(1) An individual whose EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD license has expired for less than one year may, within one year after expiration, complete all renewal requirements, pay a late licensure fee. Individuals applying for EMR, EMT, AEMT, or Paramedic licensure also may be required to successfully pass the Department's approved written examination to become licensed. The individual's new expiration date will be two years from the previous expiration date.

(2) An individual whose license for EMR, EMT, AEMT, EMT-IA, or Paramedic has expired for more than one year shall:

(a) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in patient care skills at the licensure level;

(b) successfully complete the applicable Department's approved written examination;

(c) complete all renewal requirements; and

(d) the individual's new expiration date will be two years from the completion of all renewal materials.

(3) An individual whose certification has lapsed, is not authorized to provide care as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD until the individual completes the renewal process.

R426-5-1100. Emergency Medical Care During Clinical Training.

A student enrolled in a Department-approved training program may, under the direct supervision of the course coordinator, an instructor in the course, or a preceptor for the course, perform activities delineated within the training curriculum that otherwise requires licensure to perform.

R426-5-1200. Instructor Requirements.

(1) The Department may certify as an EMS Instructor an

individual who:

(a) meets the initial certification requirements in R426-5-1300; and

(b) is currently in Utah as an EMR, EMT, AEMT, EMT-IA, or Paramedic.

(2) The Department adopts the United States Department of Transportation's "EMS Instructor Training Program as the standard for EMS Instructor training and competency in the state, which is adopted and incorporated by reference.

(3) An EMS instructor may only teach up to the license level to which the instructor is licensed.

(4) An EMS instructor shall comply with the teaching standards and procedures in the EMS Instructor Manual.

(5) An EMS instructor shall maintain the EMS license for the level the instructor is certified to teach. If an individual's EMS license lapses, the instructor certification is invalid until EMS license is renewed.

(6) The Department may waive a particular instructor certification requirement if the applicant can demonstrate the applicant's training and experience requirements are equivalent or greater to what are required in Utah.

R426-5-1300. Instructor Certification.

(1) The Department may certify an individual who is an EMR, EMT, AEMT, EMT-IA, or Paramedic as an EMS Instructor for a two-year period.

(2) An individual who wishes to become certified as an EMS Instructor shall:

(a) Submit an application and pay all applicable fees;

(b) submit three letters of recommendation regarding EMS skills and teaching abilities;

(c) submit documentation of 15 hours of teaching experience;

(d) successfully complete all required examinations; and

(e) successfully complete the Department-sponsored initial EMS instructor training course, or equivalent.

(3) An individual who wishes to become certified as an EMS Instructor to teach EMR, EMT, AEMT, or Paramedic courses shall provide documentation of 30 hours of patient care within the prior year.

(4) The Department may waive portions of the initial EMS instructor training courses for previously completed Department-approved instructor programs.

(5) An individual shall submit every two years a completed and signed "instructor contract" to the Department agreeing to abide by the standards and procedures in the current Instructor Manual.

R426-5-1400. Instructor Recertification.

(1) An EMS instructor who wishes to recertify as an instructor shall:

(a) maintain current EMS licensure;

(b) attend the required Department-approved instructor seminar at least once in the two year recertification cycle; and

(c) submit an application and pay all applicable fees.

R426-5-1500. Instructor Lapsed Certification.

(1) An EMS instructor whose instructor certification has expired for less than two years may again become certified by completing the recertification requirements.

(2) An EMS instructor whose instructor certification has expired for more than two years shall complete all initial instructor certification requirements and reapply as if there were no prior certification, however the Department may waive portions of the initial EMS instructor training courses if the individual is able to demonstrate competency to the Department.

R426-5-1600. Training Officer Certification.

(1) The Department may certify an individual who is a

certified EMS instructor as a training officer for a two-year period.

(2) An individual who wishes to become certified as an EMS Training officer shall:

- (a) Be currently certified as an EMS instructor;
- (b) successfully complete the Department's course for new training officers;
- (c) submit an application and pay all applicable fees; and
- (d) submit biennially a completed and signed "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the then current Training Officer Manual.

(3) A training officer shall maintain EMS instructor certification to retain training officer certification.

(4) An EMS training officer shall abide by the terms of the Training Officer Contract, and comply with the standards and procedures in the Training Officer Manual as incorporated into the respective Training Officer Contract.

R426-5-1700. Training Officer Recertification.

(1) A training officer who wishes to recertify as a training officer shall:

- (a) Attend a training officer seminar at least once in the two year recertification cycle;
- (b) maintain current EMS instructor and EMS license;
- (c) submit an application and pay all applicable fees;
- (d) successfully complete any Department-examination requirements; and

(e) submit a completed and signed new "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the current training officer manual.

R426-5-1800. Training Officer Lapsed Certification.

(1) An individual whose training officer certification has expired for less than two years may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the old expiration date.

(2) An individual whose training officer certification has expired for more than two year shall complete all initial training officer certification requirements and reapply as if there were no prior certification.

R426-5-1900. Course Coordinator Certification.

(1) The Department may certify an individual as an EMS course coordinator for a two-year period.

(2) An individual who wishes to certify as a course coordinator shall:

- (a) Be certified as an EMS instructor;
- (b) be a co-coordinator of record for one Department-approved course with a certified course coordinator;
- (c) submit a written evaluation and recommendation from the course coordinator in the co-coordinated course;
- (d) complete certification requirements within one year of completion of the Department's course for new course coordinators;

(e) submit an application and pay all applicable fees;

(f) complete the Department's course for new course coordinators;

(g) sign and submit the "Course Coordinator Contract" to the Department agreeing to abide to the standards and procedures in the then current Course Coordinator Manual; and

(h) maintain EMS instructor certification.

(3) A Course Coordinator may only coordinate courses up to the licensure level to which the course coordinator is licensed.

(4) A course coordinator shall abide by the terms of the "Course Coordinator Contract" and comply with the standards and procedures in the Course Coordinator Manual as incorporated into the "Course Coordinator Contract."

(5) A Course Coordinator shall maintain an EMS Instructor certification and the EMS license for the level that the course coordinator is certified to coordinate. If an individual's EMS license lapses, the Course Coordinator certification is invalid until EMS license is renewed.

R426-5-2000. Course Coordinator Recertification.

(1) A course coordinator who wishes to recertify as a course coordinator shall:

(a) Maintain current EMS instructor and EMR, EMT, AEMT, EMT-IA, or Paramedic license;

(b) coordinate or co-coordinate at least one Department-approved course every two years;

(c) attend a course coordinator seminar at least once in the two year recertification cycle;

(d) submit an application and pay all applicable fees; and

(e) sign and submit a Course Coordinator Contract to the Department agreeing to abide by the policies and procedures in the then current Course Coordinator Manual.

R426-5-2100. Course Coordinator Lapsed Certification.

(1) An individual whose course coordinator certification has expired for less than two year may again become certified by completing the recertification requirements. The individual's new expiration date will be two years from the recertification date.

(2) An individual whose course coordinator certification has expired for more than two year shall complete all initial course coordinator certification requirements and reapply as if there were no prior certification. The Department may waive portions of the initial course coordinator requirements such as the co-coordinator requirements if the candidate has coordinated or co-coordinated a course within the past three years.

R426-5-2200. Course Approvals.

(1) A course coordinator offering EMS training to individuals who wish to become licensed as an EMR, EMT, AEMT, EMT-IA, or Paramedic shall obtain Department approval prior to initiating an EMS training course. The Department shall approve a course if:

(a) The applicant submits the course application and fees no earlier than 90 days and no later than 30 days prior to commencing the course;

(b) the applicant has sufficient equipment available for the training or if the equipment is available for rental from the Department;

(c) the Department finds the course meets all the Department rules and contracts governing training;

(d) the course coordinators and instructors hold current respective course coordinator and EMS instructor certifications; and

(e) the Department has the capacity to offer the applicable examinations in a timely manner after the conclusion of the course.

R426-5-2300. Paramedic Training Institutions Standards Compliance.

(1) A person shall be authorized by the Department to provide training leading to the licensure of a Paramedic.

(2) To become authorized and maintain authorization to provide Paramedic training, a person shall:

(a) Enter into the Department's standard Paramedic training contract; and

(b) adhere to the terms of the contract, including the requirement to provide training in compliance with the Course Coordinator Manual and the Utah Paramedic Training Program Accreditation Standards Manual.

R426-5-2400. Off-line Medical Director Requirements.

(1) The Department may certify an off-line medical director for a four-year period.

(2) An off-line medical director shall be:

(a) a physician actively engaged in the provision of emergency medical care;

(b) familiar with the Utah EMS Systems Act, Title 26, Chapter 8a, and applicable state rules; and

(c) familiar with medical equipment and medications required.

R426-5-2500. Off-line Medical Director Certification.

(1) An individual who wishes to certify as an off-line medical director shall:

(a) have completed an American College of Emergency Physicians or National Association of Emergency Medical Services Physicians medical director training course or the Department's medical director training course within twelve months of becoming a medical director;

(b) submit an application and;

(c) pay all applicable fees.

(2) An individual who wishes to recertify as an off-line medical director shall:

(a) attend the medical directors annual workshop at least once every four years;

(b) submit an application; and

(c) pay all applicable fees.

R426-5-2600. Epinephrine Auto-Injector Use.

(1) Any qualified entities or qualified adults as defined in 26-41-102 in accordance with 26-41-107 shall receive training approved by the Department. The training shall include:

(a) recognition of life threatening symptoms of anaphylaxis;

(b) appropriate administration of an epinephrine auto-injector;

(c) proper storage of an epinephrine auto-injector;

(d) disposal of an epinephrine auto-injector; and

(e) an initial and annual refresher course.

(2) The annual refresher course requirement may be waived if:

(a) the qualified entities or qualified adults are currently licensed at the EMR or higher level by the State of Utah, or

(b) the approved trainings are the Red Cross and American Heart Association epinephrine auto-injector modules.

(3) Training in the school setting shall be based on approved Department trainings found on <http://www.choosehealth.utah.gov/prek-12/school-nurses.php> and provided in accordance with 26-41-104.

(4) All epinephrine auto injectors shall be stored and disposed of following the manufacturer's specifications.

R426-5-2700. Law Enforcement Blood Draws Authorized Individual Qualifications.

(1) Individuals who are not authorized to draw blood pursuant to Utah Code Title 41-6a-523(1)(b), or individuals who are not licensed by the Department such as AEMTs, EMT-IAs, or Paramedics shall meet one of the following requirements as a prerequisite for authorization to withdraw blood for the purpose of determining its alcohol or drug content when requested to do so by a peace officer:

(a) training in blood withdrawal procedures obtained as a defined part of a successfully completed college or university course taken for credit, or

(b) training in blood withdrawal procedures obtained as a defined part of a successfully completed training course which prepares individuals to function in routine clinical or emergency medical situations, or

(c) training of no less than three weeks duration in blood withdrawal procedures under the guidance of a licensed

physician.

R426-5-2800. Permits for Blood Draws.

(1) The Department may issue permits to withdraw blood for the purpose of determining the alcohol or drug content therein, when requested by a peace officer, to qualified applicants, as determined by the Department. Individuals described in R426-5-2700 are exempt from permit requirements.

(2) Application to obtain a permit shall be made to the BEMSP on forms provided by the Department.

(3) When the permit holder is requested to withdraw blood for the above stated purpose at a location other than the facility indicated above, they shall possess a valid permit card.

(4) Permits shall be valid for a three year period. The date the permit expires shall appear on the permit.

(5) Application to renew permits shall be made to the Department within three months prior to the expiration date to ensure that it will not lapse. Such application shall be made on forms provided by the Department. The permit holder shall either certify that he has been engaged in performing blood withdrawal procedures during the current permit period or submit a certificate signed by a physician attesting to his competence to perform blood withdrawal procedures.

(6) Permit holders shall notify the Department within 15 days of a change in name or mailing address.

R426-5-2900. Cause for Blood Draw Permit Termination or Revocation.

(1) Permits shall be subject to termination or revocation under any one of the following:

(a) the permit holder has made any misrepresentation of a material fact in his application, or any other communication to the Department or its representatives, which misrepresentation was material to the eligibility of the permit holder;

(b) the permit holder is not qualified to hold a permit;

(c) the permit holder after having received a permit has been convicted of a felony or of a misdemeanor which misdemeanor involves moral turpitude; or

(d) the permit holder does not comply with the possession requirements.

R426-5-3000. Published List of Authorized Individuals Permitted to Draw Blood.

(1) The Department will make available to the public a list of individuals authorized to withdraw blood for determination of its alcohol or drug content.

(2) The Department may publish amended lists when deemed necessary.

R426-5-3100. Background Screening Clearance for EMS Certification.

(1) The Department shall conduct a background screening on each individual who seeks to certify or recertify as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD. The Department shall approve EMS certification or recertification upon successful completion of a background screening. Background clearance indicates the individual does not pose an unacceptable risk to public health and safety.

(2) The Department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child

and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1; and

(g) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(3) If the Department determines an individual is not eligible for certification or recertification based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(4) If the Department determines an individual is not eligible for certification or recertification based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

(5) The individual seeking certification or recertification shall submit the completed application, including fees, prior to submission of finger prints.

(6) Exclusion from certification or recertification.

(a) Criminal Convictions or Pending Charges:

(i) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses within the past 15 years, they shall not be approved for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(ii) If an individual has been convicted or has pleaded no contest for the following offenses, 15 years have passed since the last conviction and the offense cannot be expunged they shall be considered for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(iii) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses, they shall be considered for certification or recertification:

(A) any felony or class A under Utah Criminal Code not listed in R426-5-3100(6)(a)(i).

(B) any class B or C under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(C) any felony, class A under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(D) any felony or class A under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(E) any felony or class A under Title 76, Chapter 8,

Offenses Against the Administration of Government, Utah Criminal Code;

(F) any felony, class A under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(G) any felony, class A, B or C under the following Utah Criminal Codes:

(I) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(II) 76-10-1301 to 1314, Prostitution;

(III) any felony or class A under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(H) any felony or class A or B under Utah Motor Vehicles Traffic Code 41-6a-502 and 517.

(I) any felony or class A or B under Utah Occupations and Professions Utah Controlled Substances Act 58-37.

(J) any felony or class A or B under Alcoholic Beverage Control Act 32B-4-409.

(K) any criminal conviction or pattern of convictions that may represent an unacceptable risk to public health and safety.

(iv) An individual seeking certification who has been convicted or has pleaded no contest, is subject to a plea in abeyance, a diversion agreement, a warrant for arrest, arrested or charged for any of the identified offenses in R426-5-3100(6)(a)(iii), shall be considered for certification.

(v) A certified EMS individual who is subject to a warrant of arrest, arrested or charged for any of the identified offenses in R426-5-3100(6)(a)(iii), and after an investigation and Peer Review Board process as established in R426-5-3300, the Department may issue recertification, or suspend or revoke a certification, or place a certification on probation.

(vi) A certified EMS individual who is subject to a warrant of arrest, arrested or charged for any of the identified offenses in R426-5-3100(6)(a)(i), shall immediately have the individuals EMS certification placed on restriction pending the outcome of a CCEU investigation as per the process established in R426-5-3300.

(b) Juvenile Records.

(i) As required by Utah Code Subsection 26-8a-310(5)(b), juvenile court records shall be reviewed if an individual is:

(A) under the age of 28; or

(B) over the age of 28 and has convictions or pending charges identified in R426-5-3100(6)(a).

(ii) Adjudications by a juvenile court may exclude the individual from certification or recertification if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor any of the identified offenses in R426-5-2700(6)(a).

(c) Non-Criminal Records.

(i) The Department may deny certification or recertification based on a supported finding from:

(A) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(B) child abuse or neglect findings described in Section 78A-6-323;

(C) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(ii) The Department may deny certification or recertification based on a finding from licensing records of individuals licensed by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(d) Review of Relevant Information.

(i) Results of background screening review, as listed above in R426-5-3100(6)(a)(ii)-(iii), (b) or (c) may be reviewed to determine under what circumstance, if any, the individual may be granted certification or recertification. The following factors

may be considered:

- (A) types and number;
- (B) passage of time;
- (C) surrounding circumstances;
- (D) intervening circumstances; and
- (E) steps taken to correct or improve.

(ii) The Department shall rely on relevant information identified in R426-5-3100(2) as conclusive evidence and may deny certification or recertification based on that information.

(e) Appeal of Department certification decision.

(i) A certified EMS individual may appeal a Department certification decision as listed in R426-5-3100(6)(d)(i) to the CCEU as per the process established in R426-5-3300.

(7) A certified EMS individual who has been arrested, charged, or convicted shall notify the Department CCEU and all employers or affiliated entities who utilize the EMS individual's certification within 7 business days. The certified EMS individual shall also notify the Department of all entities they work for or are affiliated with.

(8) All licensed or designated EMS providers who are notified or become aware of a certified EMS individual arrest, charge or conviction shall notify the Department CCEU within 7 business days.

R426-5-3200. Review and Investigation by the Complaint, Compliance and Enforcement Unit (CCEU).

(1) The CCEU shall review all complaints filed against an EMS provider and a certified EMS individual.

(a) Complaints shall be in writing and submitted on an approved CCEU complaint form.

(b) Every complaint shall have the complainant's contact information and be signed by the complainant.

(2) Designated or licensed provider complaints will be investigated by the CCEU.

(a) The CCEU may conduct interviews with the provider.

(b) The CCEU will allow the provider an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(c) Based on the investigation, the CCEU will make recommendations to the Department's Bureau Director.

(d) If the CCEU recommendation is that the provider is to be placed on probation or suspension, the CCEU shall recommend terms and conditions.

(e) The Department may take action against a designated or licensed provider's license or designation based on the investigative findings.

(f) The Department shall notify the provider in writing of the Department's decision within 30 days of completion of the investigation.

(3) Certified EMS individual complaints will be investigated either by the CCEU or by the Primary Affiliated Provider (PAP).

(a) The CCEU shall investigate the following complaints against a certified EMS individual.

(i) If the CCEU determines that:

(A) the certified EMS individual demonstrates a threat to him or herself or to a coworker,

(B) the certified EMS individual demonstrates a threat to the public health,

(C) the certified EMS individual demonstrates a threat to the safety or welfare of the public,

(D) the certified EMS individual potentially violated R426-5-2800(4), or

(E) the CCEU determines the risk cannot be reasonably mitigated.

(ii) The Department may place the certified EMS individual on a restricted certification while an investigation is pending until terms are reached for a provisional certification using the process outlined in R426-5-3200(5)(e).

(iii) The CCEU may conduct interviews with all parties necessary. The CCEU will gather information and evidence, which may include requiring the certified EMS individual to submit to a drug or alcohol screening or any other appropriate evaluation.

(iv) The certified EMS individual shall have an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(v) Once the CCEU has completed its investigation it shall submit the report with all findings and recommendations to the Peer Review Board per R426-5-3300 and the Bureau Director for review.

(vi) While waiting for the Peer Review Board process, the Department shall notify the certified EMS individual in writing of the CCEU's recommendation within 30 days of the completion of the investigation.

(b) The Primary Affiliated Provider shall investigate a complaint against the certified EMS individual who the CCEU refers to the PAP.

(i) The PAP investigation shall:

(A) be investigated by the licensed or designated EMS provider's EMS certified medical training officer or designee;

(B) be completed and findings submitted to the CCEU within 30 calendar days from receipt of complaint from the CCEU;

(ii) If the CCEU determines that the PAP actions are insufficient, the CCEU may initiate an investigation of the certified EMS individual which follows the CCEU and the Peer Review Board process.

(4) The Department shall investigate a certified EMS individual's certification or a provider's license or designation for any of the following:

(a) refusal to submit to a drug test requested by the EMS provider or the Department;

(b) failure to report by an individual or any affiliated provider pursuant to R426-5-3100(7) and (8);

(c) non-prescribed use of or addiction to narcotics or drugs;

(d) use of alcoholic beverages or being under the influence of alcoholic beverages at any level while on call or on duty as an EMS personnel or while driving any EMS vehicle;

(e) being under the influence of a prescribed or non-prescribed medication or drug (legal or illegal) while on call or on duty as a certified EMS individual who affects the person's ability to operate or function safely.

(f) failure to comply with the training, licensing, or relicensing requirements for the license or certification;

(g) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator. Action taken by the Department on this item shall only be against the individual's ability to perform this particular function and would not affect their base certification;

(h) fraud or deceit in applying for or obtaining a certification;

(i) fraud, deceit, lack of professional competency, patient abuse, or theft in the performance of the duties as a certified EMS individual;

(j) false or misleading information or failure to disclose criminal background information during an investigation or an EMS Personnel Peer Review Board proceeding;

(k) unauthorized use or removal of narcotics, medications, supplies or equipment from a provider, emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification or providers licensure;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) mental incompetence as determined by a court of competent jurisdiction;

(o) demonstrated inability and failure to perform adequate patient care;

(p) inability to provide emergency medical services with reasonable skill and safety because of illness, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated;

(q) misrepresentation of an individual's level of certification;

(r) failure of a certified EMS individual to display a clearly identifiable level of medical certification during an EMS response;

(s) unsafe, unnecessary or improper operation of an emergency vehicle that would likely cause concern or create a danger to the general public; or

(t) improper or unnecessary use of emergency equipment.

(5) Background screening referrals may be submitted to the CCEU.

(a) The CCEU shall review any case referred under R426-5-3100.

(b) The CCEU may require the certified EMS individual to provide the proper criminal background documentation.

(c) The certified EMS individual shall notify the CCEU of all entities they work for or are affiliated with or that they may become affiliated with in connection to their EMS certification.

(d) Failure to comply with any CCEU requirements may result in disciplinary action against the certified EMS individual's certification.

(e) The CCEU may negotiate with the certified EMS individual and their primary affiliated provider to determine terms and conditions of the EMS individual's provisional certification.

(i) When the Department determines a certified EMS individual's certification will be restricted, the CCEU shall notify both the certified EMS individual and all providers they are affiliated with.

(ii) Within 2 business days of receiving the complaint or referral, the CCEU will attempt to contact and begin negotiations with the primary affiliated provider and the certified EMS individual. All parties will attempt to determine reasonable terms and conditions to the certified EMS individual's certification that would mitigate the concerns alleged in the complaint or referral.

(iii) If terms and conditions are agreed upon between the parties, the certified EMS individual and all affiliated providers shall be notified immediately. This notification will include that the certified EMS individual is under a provisional certification with terms and conditions until the resolution of any criminal charge or the completion of an investigation.

(iv) If the certified EMS individual is not employed or affiliated with a provider or if terms and conditions are not agreed upon, the CCEU will take action necessary to protect the public's best interest.

(v) The CCEU, the certified EMS individual and the provider, if applicable shall sign the terms of the provisional certification and licensure agreement. Non-licensed providers shall be notified of the provisional certification and its terms and conditions.

(vi) Once the provisional certification has been signed, all known EMS providers who the certified EMS individual is affiliated with will be notified immediately by the CCEU.

(vii) If any affiliated EMS provider or the certified EMS individual fail to abide by the terms and conditions of a provisional certification, both may be subject to sanctions by the Department.

(6) Appeal process;

(a) If a provider chooses to appeal an action by the Department, they may appeal to the EMS Committee or pursue

a remedy under the Utah Administrative Procedures Act, 63G-4-201.

(i) If the Department action is appealed to the EMS Committee, then the recommendation shall be given to the Department Executive Director for a final decision.

(b) If a certified EMS individual chooses to appeal an action by the Department, they may appeal to the Executive Director, or pursue a remedy under the Utah Administrative Procedures Act, 63G-4-201.

R426-5-3300. Peer Review Board.

The EMS Personnel Peer Review Board is created under section 26-8a-105(4).

(1) Membership of the EMS Personnel Peer Review Board. The EMS Personnel Peer Review Board shall be composed of the following 15 members appointed by the Executive Director of the Department of Health:

(a) One EMS administrative officer representing a licensed provider from a county of the first or second class;

(b) One EMS administrative officer representing a licensed provider from a county of the third through sixth class;

(c) One educational representative from an accredited EMS training program;

(d) One physician certified and practicing as an EMS Medical Director;

(e) One certified EMD;

(f) Two representatives from professional employee groups, one fire based, and one non-fire based;

(g) Two certified quality assurance/medical training officers;

(h) Two non-supervisory certified EMT's;

(i) Two non-supervisory certified AEMT's;

(j) Two non-supervisory certified Paramedics;

(2) EMS Personnel Peer Review Board member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a six year term beginning no later than October 1, 2015.

(b) The Department shall adjust the length of terms to ensure the terms of members of the board are staggered so approximately one third of the board is appointed every two years.

(c) No member shall serve consecutive full terms.

(d) When a vacancy occurs in the membership of the board for any reason, the Executive Director of the Department shall appoint the replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Personnel Peer Review Board shall organize and select one of its members as Chair and one of its members as Vice Chair to serve no more than two years in each position.

(f) If a board member becomes ineligible for the EMS Personnel Peer Review Board membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Personnel Peer Review Board Meetings.

(a) Regular meetings of the Peer Review Board shall be scheduled quarterly.

(i) Regular meetings shall be noticed and posted to employers and posted in accordance with the Utah Open and Public Meetings Act, Section 52-4-202.

(ii) Failure to attend three or more consecutive meetings by any member may be grounds for removal of that member and replacement in accordance with subsection (2)(d).

(iii) A member may not receive compensation or benefits from the Department for the member's service. The member

may receive per diem and travel expensed in accordance with Department rules and policies.

(4) Once a complaint against a certified EMS individual is investigated, the CCEU shall refer the case and provide a report with all findings and recommendations to the EMS Personnel Peer Review Board.

(5) If the EMS Personnel Peer Review Board chooses to recommend any action that deviates from the CCEU recommendation, the board shall provide written justification for that recommendation.

(6) The EMS Personnel Peer Review Board may make recommendations to the Bureau Director, of:

- (a) no Department action, or
- (b) a letter of notice, or
- (c) probation of the certified EMS individual's certification with specific terms and conditions for a period of time, or
- (d) suspension of the certified EMS individual's certification for a defined period of time, or
- (e) permanent revocation of the certified EMS individual's certification.

(7) If the Department's Bureau Director modifies the recommended action of the EMS Personnel Peer Review Board, the Director shall attach a written letter of dissent noting the reasoning for the decision. The Bureau Director shall then notify the EMS Personnel Peer Review Board of the dissent and action taken.

(8) The certified EMS individual shall be notified by the Department of any action taken within 15 days of the decision by mail.

(9) An action to restrict, place on probation, suspend, or revoke the certified EMS individual's certification shall be done in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

R426-5-3400. EMS Rules Task Force.

The EMS Rules Task Force is created under section 26-8a-105(3).

(1) Membership of the EMS Rules Task Force. The EMS Rules Task Force shall be composed of the following members appointed by the Executive Director of the Department of Health:

- (a) a representative from the Utah Fire Chiefs' Association;
- (b) a representative from the EMS Directors' Association;
- (c) a EMS medical director;
- (d) a privately owned EMS representative;
- (e) a rural EMS medical dispatch representative;
- (f) a paramedic licensed provider representative;
- (g) an urban EMS medical dispatch representative;
- (h) an Emergency Nurses Association representative;
- (i) a course coordinator from an accredited EMS training program;
- (j) an EMS training officer;
- (k) a representative from the State EMS Committee;
- (l) a trauma center representative.

(2) EMS Rules Task Force member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a three year term.

(b) The Department shall adjust the length of terms to ensure the terms of members of the EMS Rules Task Force are staggered so approximately one third of the EMS Rules Task Force is appointed every two years.

(c) Members may serve two consecutive full terms.

(d) When a vacancy occurs in the membership for any reason, the Department shall solicit applications for replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Rules Task Force may organize and select one of its members as Chair and one of its members as Vice

Chair to serve no more than two years in each position.

(f) If a EMS Rules Task Force member becomes ineligible for the EMS Task Force membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Rules Task Force Meetings.

(a) Regular meetings of the EMS Rules Task Force shall be scheduled as determined by the membership and the Department.

KEY: emergency medical services

November 7, 2018

Notice of Continuation December 6, 2016

26-1-30

26-8a-302

R438. Health, Disease Control and Prevention, Laboratory Services.**R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah.****R438-13-1. Introduction.**

The purpose of this rule is to enable the proper execution of Section 26-26-1 et seq., for controlling the humane use of animals obtained from impound establishments for the diagnosis and treatment of human and animal diseases; the advancement of veterinary, dental, medical, and biological sciences; and the testing, improvement, and standardization of laboratory specimens, biologic products, pharmaceuticals and drugs.

R438-13-2. Definitions.

(1) "ADMINISTRATOR" means a Department of Health staff member appointed by the Director to administer this rule.

(2) "ANIMAL" means any unredeemed, abandoned or stray dog or cat impounded and requested by an institution for purposes specified in Section 26-26-1 et seq., as amended, and this rule. Animals obtained from any source other than an establishment are not covered by this rule. Owners of voluntarily released animals may elect, by signature, whether the animal may or may not be used in research.

(3) "ANIMAL FACILITY" means an area of the institution where animals are housed or kept.

(4) "COMMITTEE" means a body of seven individuals appointed by the Administrator with the Director's approval for carrying out the purpose of this rule.

(5) "DEPARTMENT" means the Utah Department of Health (DOH).

(6) "DIRECTOR" means the Executive Director of the Department of Health.

(7) "ESTABLISHMENT" means any place maintained for the impounding, care, and disposal of animals seized by lawful authority.

(8) "INSPECTION TEAM" means one animal control officer, recommended by the Utah Animal Control Officers' Association (UACO,) and one licensed veterinarian, both approved by the institution being inspected and appointed by the Administrator.

(9) "INSPECTOR" means a representative of the United States Department of Agriculture (USDA) or a qualified person acceptable to the Director or Administrator.

(10) "INSTITUTION" means any school or college of agriculture, veterinary medicine, medicine, pharmacy, dentistry, or other educational, hospital or scientific establishment, as determined by the committee and approved by the Director, which is properly concerned with the investigation of or instruction concerning the structure or functions of living organisms, or the cause, prevention, control, or cure of diseases or abnormal conditions of human beings or animals.

(11) "PHYSICIAN" means any person who is licensed by the Utah Department of Commerce under either the Utah Medical Practice Act or the Utah Osteopathic Medicine Licensing Act to practice medicine and/or surgery in all its branches, or a physician in the employment of the government of the United States who is similarly qualified.

(12) "VETERINARIAN" means any person who is licensed by the Department of Commerce under the Veterinary Practice Act to practice veterinary medicine, surgery, and dentistry or a veterinarian in the employment of the government of the United States who is similarly qualified.

R438-13-3. Department of Health - Power to Certify Institutions.

The Department, under the powers and duties conferred upon it by Section 26-26-2, may issue a certificate to obtain impounded animals to any institution requesting such certification upon being assured that the institution meets the

requirements of Section 26-26-1 et seq., and has satisfied the requirements for certification, as determined after an inspection.

R438-13-4. Committee -- Responsibilities and Membership.

(1) There is created an Impounded Animals Advisory Committee pursuant to Section 26-1-20.

(2) The committee shall review and evaluate all applications of institutions requesting certification under this rule, or applications for renewal of certification. The committee shall investigate any complaints of violation of Section 26-26-1 et seq. and/or this rule by any individual, institution, or establishment, and shall inform the Director of its findings. The committee shall make recommendations for or against certification or enforcement of the law and this rule.

(3) The committee shall include not less than one representative from the following: institutions directly involved with the use of laboratory animals, a physician, a representative of establishments, a veterinarian, a representative of animal welfare advocates, and two other members to be appointed by the Director, one of which must represent the public. The committee shall elect a chairman and a vice chairman from its membership. The committee shall be convened when an application or violation complaint is received by the Administrator or the Director.

R438-13-5. Administrator - Duties and Responsibilities.

The Director may appoint a member of the Department staff to be responsible for the administration of this rule. The Administrator shall be a nonvoting member of the committee and shall issue certificates, receive and review all applications and records, conduct investigations, and receive and review reports of an inspector, consistent with the requirements of Section 26-26-1 et seq. and shall advise the committee of all findings.

R438-13-6. Requirements for Certification.

(1) Any institution requesting certification under this rule shall be found to have the proper personnel and facilities for the care and humane treatment of any animal procured under this rule, and so shown by the application and by an inspection of the institution's animal facility by an inspector.

(2) The care and management of animals shall be performed by qualified personnel.

(3) The institution's animal facilities shall be under the direct supervision of a diplomate of the American College of Laboratory Animal Medicine, a physician, veterinarian, or dentist, or a person formally trained in the biological sciences and having no less than three years of pertinent training and experience in animal care, or a person qualified by specialized education, training and experience essentially equivalent to the above categories.

(4) Animal care personnel shall be qualified by training and experience in the care of animals as determined by the institution's animal facility supervisor.

(5) Apprentice personnel shall be under the direct and immediate supervision of regular animal care personnel.

(6) The size of the animal care staff shall be adequate to assure daily attention to the needs of the animals.

(7) Provision shall be made for the emergency care of animals whenever needed.

(8) Sanitary practices and humane care of animals shall conform to standards as described in the National Institutes of Health Publication, revised 2011, "Guide for the Care and Use of Laboratory Animals, 8th ed" and the Animal Welfare Act, which are incorporated by reference.

(9) Institutions seeking initial certification must submit evidence of a successful on-site inspection of their impounded animal facilities by the United States Department of Agriculture (USDA). Institutions unable to be inspected by USDA are

subject to inspection by a Department of Health inspection team. After initial certification, institutions wishing to maintain certified status shall be inspected at least annually by the USDA, an inspection team or both.

(10) Each institution shall appoint an animal care and use committee. This committee should include a scientist from the institution, a doctor of veterinary medicine, and a person who is not affiliated with the institution in any way other than a member of the committee.

(11) This committee should be responsible for evaluating the animal care and use program. Its duties should include those described in the National Institutes of Health Publication, revised 2011, "Guide for the Care and Use of Laboratory Animals, 8th ed."

R438-13-7. Application for Certification.

(1) Application for certification shall be initiated by the institution wishing to obtain unredeemed impounded animals. The application shall be made on a form furnished by the Department, and shall include:

- (a) the name and address of the institution;
- (b) the name of the person responsible for the supervision of procurement and handling of the animal(s).
- (c) an estimate of the maximum number and species of animals to be obtained by the institution during the calendar year;
- (d) the names of members of the institution's animal care and use committee.

(2) Fees for certification will be set and administered by the Department, with approval of the State Legislature.

R438-13-8. Issuance of Certificate.

(1) Upon receipt of an application, an inspector shall review the animal facility of the institution and shall submit a report of the review to the committee, unless an inspection report is submitted at the same time as the application. The committee will review the application and the inspection report. The committee will review submit written recommendations to the Director. It shall be the prerogative of the Director to determine if the institution meets the requirements of Section 26-26-1 et seq. and this rule.

(2) Any certificate is valid only for the time frame for which it is issued, not to exceed 12 months. Any institution wishing to renew a certificate shall do so on a form furnished by the Department, and shall state any changes made or contemplated since the most recent application was submitted.

(3) The certificate of approval or duplicate thereof, as supplied by the Department, shall be displayed in a prominent place in the approved institution's animal facility.

(4) A certificate cannot be transferred.

R438-13-9. Requirements for Certified Institutions.

(1) Each institution shall appoint a person to be responsible for the procurement of and maintenance of records on all animals obtained from establishments.

(2) Records shall be kept by the institution of all animals procured under certification.

(3) Records shall include:

- (a) a description of the animal, including breed, if known;
- (b) the date and place where the animal was procured;
- (c) the physical condition of the animal when received by the institution;
- (d) the cage or pen number or other identification;
- (e) the experimental or scientific use of the animal, including information as to whether anesthesia was or was not used;
- (f) name and address of person who adopted animal, if adopted at the end of the study period;
- (g) the method of euthanasia of the animal, if euthanasia

is performed.

(4) The institution is to provide a copy of the information in 438-13-9(3) to an establishment for each animal received.

(5) After the final disposition of the animal, a copy of the completed record shall be mailed or delivered to the Administrator by the institution.

(6) The completed records shall be maintained by the institution for not less than two years and shall be made available for inspection at any time deemed necessary by the Director or his authorized representative.

(7) Written requisitions may be required by an establishment prior to the release of an animal to an institution. The institution shall furnish one copy of the requisition to the establishment and one copy shall be retained by the institution.

(8) The requisition shall include:

- (a) name and address of the institution;
- (b) name and address of the establishment;
- (c) number, species, size and sex of the animals desired;
- (d) number of certificate;
- (e) date requisition was issued.

(9) The institution shall accept the available animals and provide for their transportation to the institution.

(10) The institution shall compensate the establishment for the actual expense for holding animals beyond the time of the notice to the institution of their availability until they have been obtained by the institution.

(11) At any time after a requisition has been issued to an establishment and before notice of the availability of the animals requisitioned has been made to the institution, the institution may cancel all or any unfilled part of the requisition.

(12) Whenever unredeemed animals are received by an institution, the institution shall furnish the establishment a receipt. Receipts shall be issued in triplicate and shall be countersigned by a representative of the establishment. A copy shall be mailed or delivered to the Administrator by the institution and one copy shall be retained by the institution. A receipt shall be issued for each animal obtained. The receipt shall show the date that the animal was delivered to the agent of the institution by the establishment and the signature of the person to who it was delivered.

(13) At the conclusion of an experiment which does not require euthanasia for the collection of samples, the institution's animal facility may, providing the establishment agrees and for the purposes of adoption, return to the establishment any healthy animal posing no contagious threat to humans. If the establishment does not agree to accept the animal, the institution's animal facility shall euthanize the animals.

(14) The Administrator must be notified within ten days of personnel changes.

R438-13-10. Requirements of an Establishment.

(1) Each establishment shall keep a public record of all animals received and disposed.

(2) Whenever a requisition for impounded animals is submitted to an establishment, it shall be its duty to make available to the institution the number of animals of the species, size, and sex specified in the requisition, from the unredeemed animals in their charge. The establishment shall then withhold from the destruction all unredeemed animals of the species, size, and sex specified by the requisition until the number of animals is sufficient to complete the requisition.

(3) If the number of animals specified by the requisition is not available, the establishment shall immediately make available all unredeemed animals in the establishment under his supervision.

(4) It shall be unlawful for any establishment to release any animal to an institution not holding a valid certificate issued under this rule.

R438-13-11. Maintenance and Release of Animals by the Institution.

(1) No animal obtained by an institution on requisition as herein provided shall be sold or given into the possession of any other person or organization unless released to its previous owner or adopted after the experiment to a private citizen for possession as a pet. All animals shall be transported immediately from the establishment to the institution in a humane manner and maintained by the institution for the remainder of the life of the animal unless adopted under the provision of this rule. Nothing shall prohibit the institution from releasing an animal to its previous owner if satisfactory proof of ownership is provided to the institution. The institution may require the owner to reimburse the institution for actual expenses for maintaining the animal from the time it was received by the institution until it was delivered to the previous owner.

(2) Any animal procured by an institution under this rule shall be handled, transported and disposed of in a humane manner.

R438-13-12. Revocation of Certification.

(1) Violation of Section 26-26-1 et seq. or this rule violates Section 26-23-6 and is cause to consider the cancellation of any certificate issued under this rule.

(2) Notification of Intent To Revoke

Upon receipt of evidence of a violation, the Director shall issue written notice, pursuant to Section 63G-4-2, of intent to revoke the certificate of the institution 30 days following receipt of notice.

(3) Notice of Hearing

The institution shall have 15 days from receipt of notice to file a written response to show why the certificate should not be revoked, and to request an informal hearing under Section 63G-4-2. If requested by the institution, the Director shall grant an informal hearing upon 15 days written notice.

(4) Action On Hearing

If after the hearing the Director decides the certificate shall be revoked, copies of the revocation shall be sent to the institution and all establishments providing animals for the institution. Institutions may seek review of agency action as outlined in Section 63G-4-2.

R438-13-13. Renewal of Revoked Certificate.

An institution may submit an application for the renewal of a certificate canceled by reason of violation of the law or this rule not less than 30 days after final action was taken. The application shall be accompanied by documented evidence that the reason for cancellation has been removed. Upon being assured that the institution is acting in good faith and upon receipt of a favorable recommendation from the committee, the Director may issue a new certificate.

R438-13-14. Complaint.

Anyone who files a complaint with the Department against an individual, institution or establishment violating any part of R438-13 et seq., shall supply in writing specific information regarding the alleged violation or violations. The complaint shall include the time, date, place, individual or persons involved and the names of witnesses who may be called upon to testify. This statement must be in the form of a sworn affidavit and must be notarized. Preliminary investigations of complaints may be conducted at the discretion of the Director or a designated representative without the filing of a notarized sworn affidavit.

KEY: animals, laboratories, laboratory animals
November 7, 2018 26-26-1 to 7
Notice of Continuation November 7, 2018

R523. Human Services, Substance Abuse and Mental Health.**R523-17. Behavioral Health Crisis Response Systems Standards.****R523-17-1. Authority.**

(1) This rule establishes procedures and standards for administration of substance use disorder and mental health services as granted by Section 62A-15-1302.

R523-17-2. Purpose.

(1) This rule is designed to create standards of care and practice for statewide behavioral health crisis response system, crisis line services and a certification for crisis workers.

R523-17-3. Intent.

(1) Create standards of care and practice and certification of crisis workers for statewide behavioral health crisis response system, statewide and local mental health crisis lines.

(2) Agencies and individuals impacted by this rule have until June 30, 2019 to come into compliance.

R523-17-4. Definitions.

(1) "Bridging Strategies" are transition strategies that include brief patient education that helps the patient understand his or her condition and what treatment options exist to facilitate patient and family follow-through;

(a) Provides assistance with understanding and navigating the system of potential supports, preferably from a peer;

(b) May include counseling by staff from a community-based organization who can then see the patient for follow-up care after discharge and giving the patient a copy of their safety plan and making sure it is relevant to their current level of care; and

(c) Sometimes called peer-or community bridging. Also providing onsite counseling.

(2) "Caring Connection" is defined as a follow up phone call, mailed note, text or e-mail checking back in with the caller. This can be done by crisis staff or other support staff.

(3) "Caring Contacts" Caring contacts are brief communications with patients during care transitions such as discharge from treatment or when patients miss appointments or drop out of treatment. These contacts, through which care providers continue to show support for a patient, can promote patient's feeling of connection to treatment and increase their participation in collaborative treatment. Caring contacts may be especially helpful for patients who have barriers to outpatient care or are unwilling to access outpatient care.

(4) "Certified Crisis Worker" means an individual who:

(a) meets the standards of qualification or certification that the Division of Substance Abuse and Mental Health (division) sets, in accordance with Section 62A-15-1302; and

(b) staffs the statewide mental health crisis line or a local mental health crisis line under the supervision of at least one mental health therapist.

(5) "Local Mental Health Crisis Line" means the same as that term is defined in Subsection 63C-18-102(2).

(6) "Mental Health Crisis" is defined as any intense behavioral, emotional, or psychiatric situation perceived to be a crisis by the individual experiencing the crisis, family, or others who closely observe the individual. The crisis may include a mental health condition that manifests itself by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention of intervention to result in:

(a) serious jeopardy to the individual's health or well-being; or

(b) a danger to others; or

(c) significantly reduced levels of functioning in primary

activities of daily living.

(7) "Mental Health Therapist" is an individual licensed in Utah under the mental health professional practice act as defined in Subsection 58-60-102(5).

(8) "Statewide mental health crisis line" means the same as that term is defined in Subsection 63C-18-102(3).

(9) "Rapid Follow-up and Referral" involves taking steps during an emergency department visit or before discharge from inpatient care to facilitate immediate access to an outpatient treatment appointment for the patient, preferably within 24-48 hours after discharge. To facilitate rapid referral, it may be helpful to establish agreements with outpatient providers to accept rapid follow-up referrals.

(10) "Warm Hand Off" has a goal to increase the likelihood that a patient will follow up on a referral to one provider from another. Rather than simply providing the name and phone number of a provider, a warm hand-off connects the patient with the new provider before the first appointment.

R523-17-5. General Provisions.

(1) The Behavioral Health Crisis Response System is based on the following principles:

(a) cultural competence'

(b) strong community relationships,

(c) the use of peer supports,

(d) the use of evidence based practices,

(e) building on existing foundations with an eye towards innovation,

(f) utilization of an integrated system of care,

(g) outreach to students through school-based clinics,

(h) trauma Informed, and

(i) de-escalation.

(2) Each component within the behavioral health crisis response system must be capable of serving individuals in the context of a behavioral health crisis including:

(a) children, adolescents, adults and older adults,

(b) individuals with co-occurring conditions; including:

(i) mental health conditions,

(ii) substance use disorders,

(iii) medical needs,

(iv) intellectual/developmental disabilities,

(v) physical disabilities,

(vi) traumatic brain injuries, and/or

(vii) Dementia and related neurological disorders.

(c) individuals demonstrating aggressive behavior;

(d) individuals who are uninsured or unable to pay for services, and

(e) individuals who may lack Utah residency or legal immigration status.

(3) Each modality of service within the Behavioral Health Crisis Response System is encouraged to incorporate peer support into the services they provide, when clinically appropriate.

R523-17-6. Certification Requirements of Crisis Workers.

(1) The division shall certify that a crisis worker is qualified by training, experience, and certification. Certification will require successful completion of training provided by the division.

(2) Individuals eligible to apply for crisis worker certification include the following:

(a) Individuals licensed under Utah Department of Professional Licensing for any health or behavioral health license;

(b) Individuals with a minimum of bachelors degree in a human service related field;

(c) Individuals certified as a Certified Peer Support Specialist for a minimum of one year;

(d) Individuals certified as Case Managers for a minimum

of one year; or

(e) Individuals certified as Family Resource Facilitator for a minimum of one year.

(3) The training curriculum shall provide at least forty (40) hours of training and shall include, didactic information and skill practice using the following components as they relate to crisis intervention:

(a) Attitudinal Outcomes:

(i) acceptance of persons as different from oneself, and a non-judgmental response toward sensitive issues,

(ii) balances and realistic attitude toward self in the helper role meaning not expecting to "save" all potential suicides by one's own single effort, or to solve all the problems of the distressed person,

(iii) a realistic and humane approach to death, dying,

(iv) self-destructive behavior and other human issues, and

(v) coming to terms with one's own feelings about death and dying in so far as these feelings might deter one from helping others.

(b) Knowledge Areas:

(i) basic suicidology, including suicide assessment of desire, intent, capability, and buffers,

(ii) intervention strategies including active engagement, active rescue, and collaboration, emphasize safety and prevention,

(iii) risk of assaulting others,

(iv) community resources,

(v) consultation process,

(vi) record system and program policies,

(vii) cultural/diversity awareness,

(viii) voluntary and involuntary hospitalization criteria and procedures, and

(ix) psychopathology, psychiatric diagnosis, psychotropic medication, and substance abuse.

(c) Skill Areas:

(i) ability to assess in life-threatening situations, including risk of suicide and/or homicide,

(ii) ability to actively engage,

(iii) ability to mobilize community resources in an efficient and effective manner,

(iv) ability to respond with respect and effectiveness and render assistance to individuals in crisis and distress with appropriate regard to their cultural, racial or ethnic background; their religion or language, their socioeconomic status; or other diversity factors,

(v) provide efficient record keeping and policy implementation (e.g. recording essential notes in succinct form within the same work shift so they are useful to the next worker), and

(vi) use of the consultative process, e.g. knowing who to call under what conditions.

(3) The curriculum methodology shall include but not be limited to:

(a) role playing and other experiential based methods,

(b) use of audiovisual materials, such as simulated recorded calls and videotape,

(c) an opportunity to function as a co-crisis worker with experienced staff before assignment and to work on an independent basis, and

(d) didactic presentation and reading assignments.

(4) In order to maintain crisis worker certification an individual must:

(a) Complete at least 8 hours of continuing education (CEUs) every two (2) years pertaining specifically to crisis services,

(b) 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,

(c) shall retain this proof for a period of three years after

the end of the renewal cycle for which the continuing education is due; and

(d) at a minimum, the documentation shall contain the following:

(i) date of the course,

(ii) name of the course provider,

(iii) name of the instructor,

(iv) course title,

(v) number of hours of continuing education credit; and

(vi) course objectives.

R523-17-7. Revocation of Certified Crisis Worker Certification.

(1) Certified Crisis Workers shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the Department of Human Services Provider Code of Conduct Policy.

(2) Each employer shall notify the division within 30 days, if a certified crisis worker engages in unprofessional or unlawful conduct.

(3) The division shall revoke, refuse to certify, or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.

(4) An individual who has been served a Notice of Agency Action that the certification has been revoked, or will not be renewed may request a Request for Review to the division Director or designee within 30 days of receipt of notice.

(5) The division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(6) If a certified crisis worker fails to complete the requirements for CEUs, their certificate shall be revoked or allowed to expire and shall not be renewed.

(7) The crisis workers certification shall be posted and available upon request.

R523-17-8. Standards for Local Authority Mental Health Crisis Lines.

(1) If a Local Mental Health Authority provides for a local mental health crisis line the Local Mental Health Authority shall:

(a) maintain a 24 hour/7 days per week comprehensive telephonic system capable of assessing any individual experiencing a self-defined crisis situation, leading to appropriate crisis stabilization and making appropriate referrals,

(b) collaborate with the statewide mental health crisis line,

(c) ensure that each individual who answers calls to the local mental health crisis line:

(i) is a mental health therapist and/or certified crisis worker, and

(ii) meets the standards of care and practice established by this rule,

(iii) has access to a licensed mental health clinician by direct transfer of the call that does not require a call back to the person in crisis if the non licensed crisis worker cannot stabilize the caller

(d) ensure that, based on inability to meet needs based on capacity, the calls are immediately routed to the statewide mental health crisis line,

(e) ensure that local authorities have a plan for roll over calls,

(f) ensure that regardless of the time, date, number of individuals trying to simultaneously access the local mental health crisis line, a mental health therapist or crisis worker answers the call:

(i) without the caller waiting on hold,

(ii) being screened by an individual other than a mental health therapist or crisis worker, and

(iii) within 5 rings or 30 seconds, and
 (g) ensure the discounted call abandonment rate will not exceed more than 5% of the total volume of calls.

(2) If a Local Mental Health Authority does not provide for a local mental health crisis line they shall use the statewide crisis line as a local resource.

(3) Local Authorities and the statewide crisis line shall develop and implement a plan for collaboration and coordination of care for ongoing support for individuals accessing the statewide crisis line. This plan should:

- (a) be created collaboratively between the Local Authority and the statewide crisis line, and
- (b) shall include the following components at a minimum:
 - (i) policies and procedures for coordination,
 - (ii) timeline for care transitions that includes process for warm hand off, appointment scheduling, and follow up,
 - (iii) clear expectations of communication between agencies including contact lists and shared resources lists, and
 - (iv) a plan for regular review of data to ensure collaboration and quality of continuity of care.

R523-17-9. Minimum Standards of Care and Practice.

(1) Certification or accreditation standards include:
 (a) The crisis line must provide proof of certification/accreditation from one of the following:

- (i) American Association of Suicidology (AAS),
- (ii) CONTACT USA,
- (iii) Alliance of Information and Referral Systems (AIRS),
- (iv) The Joint Commission,
- (v) Commission on Accreditation of Rehabilitation Facilities (CARF),
- (vi) Council on Accreditation (COA),
- (vii) Utilization Review Accreditation Commission (URAC), or
- (viii) DNV Healthcare, Inc.

(b) Agencies shall provide State/county licensure, as approved by the division Administrator or designee.

(c) The telephone crisis service must provide:
 (i) screening and triage,
 (ii) psycho-social support,
 (iii) connection to appropriate resources,
 (iv) follow-up capability to callers as clinically appropriate.

(d) The 24 hour/7 days per week telephone crisis service must be staffed by skilled professionals capable of assessing and making culturally competent, appropriate referrals.

(e) The telephone crisis service must use trauma-informed screenings and assessments, and incorporate this information into safety planning, referrals and follow-up interventions.

(f) The telephone crisis service must initiate mobile crisis services when available and be linked with walk-in crisis service facilities when available.

(2) Suicide Risk Assessment Standards include:

(a) Crisis centers shall adopt the National Suicide Prevention Lifeline Suicide Risk Assessment Standards minimum requirements.

(3) Imminent Risk Policies include:

(a) Crisis centers shall adopt the National Suicide Prevention Lifeline Policy for Helping Callers at Imminent Risk of Suicide

(4) Follow Up Policies include:

(a) Crisis Centers shall maintain and implement a policy detailing follow-up procedures including but not limited to:

- (i) safe-care transitions,
- (ii) rapid referrals,
- (iii) caring contacts, and
- (iv) care bridging strategies.

(b) This will detail how crisis centers will work with community partners and the statewide crisis line.

(5) Warm Hand Off Policies include:

(a) Agencies shall maintain written procedure defining and detailing a "warm hand off" process that allows for unique adaptations for each LA crisis service structure, in collaboration with the statewide crisis line.

(b) This initial procedure for a Warm Hand Off will be as follows:

(i) If clinically indicated, provide a warm handoff to LAs providers or other identified providers of care or care managers with an identified health plan. A warm handoff may include:

(A) a conference call or other direct communication with the LA provider, other provider or care manager to arrange immediate crisis support and scheduling an appointment for follow up support,

(B) if other needs are expressed by callers then additional resources may be offered to help access local recovery oriented support services as needed,

(C) Coordination with each local authority, regarding preferred communication and resources access as uniquely adapted to each local community, and

(D) a warm hand off will be done via conference call to facilitate a personal introduction between a Lifeline caller and their local behavioral health treatment providers or care managers, as well as the exchange of pertinent information, to promote the continuity of care.

(ii) The elements of a successful warm hand off include:

(A) orienting the caller as to what to expect,

(B) a positive provider to provider communications, and

(C) provision of accurate information regarding the caller's current condition, treatment and service needs, and safety goals.

(iii) The steps to initiate a warm hand off include:

(A) assessing callers for their level of acuity and need,

(B) offer to provide a person to person introduction to a representative in their local area,

(C) explain the conference call process to the caller

(D) Contact the predetermined designated number for provider in their local area

(E) Communicate the caller's situation and needs,

(F) Introduce the caller and remain on the line as needed to facilitate the conversation, and

(G) in the event that a warm handoff is clinically indicated and the individual is not able to receive a warm handoff for any reason, a minimum of one follow up "Caring Connection" shall be provided within 72 hours of initial contact, if contact information was able to be collected for the caller.

(6) Crisis Line Community Collaboration and Coordination Policies include:

(a) Crisis Centers shall have a published plan in place that outlines community resources available.

(b) The Crisis Centers shall have a collaboratively created plan published that outlines the plan for community collaboration with the following partners at minimum:

(i) Law Enforcement,

(ii) hospitals (Emergency Departments),

(iii) local mental health and substance abuse authorities,

(iv) schools, and

(v) any other crisis services in the local community.

R523-17-10. Statewide Mental Health Crisis Line Standards.

(1) The 24 hour/7 days per week statewide crisis Line shall adhere to the following standards:

(a) collaborate with Local Authorities running local crisis line,

(b) the statewide crisis line shall develop, and implement a plan for collaboration and coordination of care for ongoing support for individuals accessing services with Local Authorities,

(c) plans should be created collaboratively between the

Local Authority and the statewide crisis line,

(d) plans shall include the following components at a minimum:

- (i) policies and procedures for coordination,
- (ii) timelines for care transitions that includes process for warm hand off, appointment scheduling, and follow up,
- (iii) clear expectations of communication between agencies including contact lists and shared resources lists,
- (iv) a plan for regular review of data to ensure quality of continuity of care.

(v) assurance that each individual who answers calls to the statewide crisis line:

(A) is a mental health therapist and/or certified crisis worker

(B) meets the standards of care and practice established by this rule

(C) has access to a licensed mental health clinician by direct transfer of the call that does not require a call back to the person in crisis if the non licensed crisis worker cannot stabilize the caller.

(vi) assurance that regardless of the time, date, number of individuals trying to simultaneously access the local mental health crisis line a mental health therapist or crisis worker answers the call:

(A) without the caller waiting on hold,

(B) being screened by an individual other than a mental health therapist or crisis worker, and

(C) within 5 rings or 30 seconds,

(vii) the discounted call abandonment rate will not exceed more than 5% of the total volume of calls,

(viii) 90% of statewide crisis line calls shall be answered in state as reported by the National Suicide Prevention Lifeline call data, and

(ix) assurance that the statewide crisis line has the capacity to accept all calls that local mental health crisis lines route to the statewide crisis line.

R523-17-11. Minimum Standards of Care and Practice for the Statewide Crisis Line.

(1) Certification or accreditation include:

(a) The crisis line must provide proof of certification/accreditation from one of the following:

(i) American Association of Suicidology (AAS),

(ii) CONTACT USA,

(iii) Alliance of Information and Referral Systems (AIRS)

(iv) The Joint Commission on Accreditation of Rehabilitation Facilities (CARF),

(v) Council on Accreditation (COA),

(vi) Utilization Review Accreditation Commission (URAC), or

(vii) DNV Healthcare, Inc.

(b) State/county licensure, as approved by the division Administrator or designee,

(c) The telephone crisis service must provide:

(i) screening and triage,

(ii) psycho-social support, and

(iii) connection to appropriate resources.

(d) follow-up capability to callers as clinically appropriate, and

(e) The 24 hour/7 days per week telephone crisis service must be staffed by skilled professionals capable of assessing and making culturally competent, appropriate referrals.

(f) The telephone crisis service must use trauma-informed screenings and assessments and incorporate this information into safety planning, referrals and follow-up interventions.

(g) The telephone crisis service must initiate mobile crisis services when available and be linked with walk-in crisis service facilities when available.

(2) Suicide Risk Assessment Standards shall include:

(a) Statewide Crisis Line shall adopt the National Suicide Prevention Lifeline Suicide Risk Assessment Standards minimum requirements.

(3) Imminent Risk Policies shall include:

(a) Statewide Crisis Line shall adopt the National Suicide Prevention Lifeline Policy for Helping Callers at Imminent Risk of Suicide

(4) Follow Up Policies shall include:

(a) Statewide Crisis Line shall maintain and implement a policy detailing follow-up procedures including but not limited to:

(i) safe-care transitions,

(ii) rapid referrals,

(iii) caring contacts, and

(iv) care bridging strategies.

(b) This will detail how Statewide Crisis Line will work with community partners and the local crisis line.

(5) Warm Hand-off Policies shall include:

(a) Agencies shall maintain written procedure defining and detailing a "warm hand off" process that allows for unique adaptations for each LA crisis service structure, in collaboration with the statewide crisis line.

(b) This initial procedure for a Warm Hand Off shall be as follows:

(i) If clinically indicated, provide a warm handoff to LAs providers.

(ii) A warm handoff may include:

(A) a conference call or other direct communication with the LA provider to arrange immediate crisis support and scheduling an appointment for follow up support.

(B) If other needs are expressed by callers then additional resources may be offered to help access local recovery oriented support services as needed.

(C) coordination with each local authority regarding preferred communication and resources access as uniquely adapted to each local community.

(iii) A warm hand off will be done via conference call to facilitate a personal introduction between a Statewide Crisis Line caller and their local behavioral health treatment providers, as well as the exchange of pertinent information, to promote the continuity of care.

(iv) The elements of a successful warm hand off include:

(A) orienting the caller as to what to expect,

(B) positive provider to provider communications, and

Providing accurate information regarding the caller's current

(C) condition, treatment and service needs, and safety goals.

(v) The steps to initiate a warm hand off includes:

(A) assessing callers for their level of acuity and need,

(B) offer to provide a person to person introduction to a representative in their local area,

(C) explain the conference call process to the caller,

(D) contact the predetermined designated number for provider in their local area,

(E) communicate the caller's situation and needs; and

(F) introduce the caller and remain on the line as needed to facilitate the conversation.

(vi) In the event that a warm handoff is clinically indicated and the individual is not able to receive a warm handoff for any reason, a minimum of one follow up "Caring Connection" shall be provided within 72 hours if contact information was able to be collected for the caller.

(6) Crisis Line Community Collaboration and Coordination plan shall include:

(a) Statewide Crisis Line shall have a published plan in place that outlines community resources available.

(b) The statewide Crisis Line shall have a plan published that outlines the plan for community collaboration with the following partners at minimum:

(a) Statewide Crisis Line shall have a published plan in place that outlines community resources available.

(b) The statewide Crisis Line shall have a plan published that outlines the plan for community collaboration with the following partners at minimum:

(i) Local Authorities including Mobile Crisis Outreach Teams,

(ii) law enforcement,

(iii) hospitals (Emergency Departments),

(iv) health plans,

(v) schools, and

(vi) any other crisis services in the local community.

(c) The Statewide Crisis Line shall enter into MOU's with each Local Authority operating a Crisis Line and/or Mobile Crisis Outreach Teams and shall make good faith efforts to enter into MOU's with parties described in R523-17-11 (6b).

R523-17-12. Division Oversight of Program.

(1) The division may enter and survey the physical facility, program operation, and review curriculum and interview staff to determine compliance with this rule or any applicable contract to provide such services.

(2) Participating organizations including Local Authorities and the statewide crisis line shall also allow representatives from the division and from the local authorities as authorized by the division to monitor services. Such visits may be announced or unannounced.

**KEY: crisis response services, crisis worker certification, statewide crisis line standards
November 15, 2018**

62A-15-1302(2)

R523. Human Services, Substance Abuse and Mental Health.**R523-18. Mobile Crisis Outreach Teams Certification Standards.****R523-18-1. Authority.**

(1) This rule establishes guidelines, procedures and standards for the establishment of statewide Mobile Crisis Outreach Teams (MCOT) as directed in Subsections 62A-15-116(4) and 62A-15-1402.

R523-18-2. Purpose.

(1) This rule is enacted for the purpose of promoting the availability of comprehensive behavioral health crisis services throughout the state, by:

(a) creating standards of certification, care and practice for statewide mental health crisis response system using the MCOT model of care, and

(b) outlining the responsibilities of MCOTs including interaction with civil commitment.

R523-18-3. Definitions.

(1) "Assessment" means a formal and continuous process of collection and evaluating information about an individual to ascertain whether or not a patient is functioning at a healthy psychological, social, or developmental level and aids in service planning, treatment and referral. Assessments establish justification for interventions, services and referrals.

(2) "Certified Crisis Worker" means an individual who meets the standards of certification that the Substance Abuse and Mental Health (division) sets, in accordance with Subsection R523-17-4.

(3) "Crisis Stabilization" means direct mental health care to non-hospitalized individuals experiencing an acute crisis of a psychiatric nature that may jeopardize their current community living situation, or put them at risk of psychiatric hospitalization by:

(a) providing emotional support and safety, and

(b) mobilizing community resources, the individuals support system, family members, and others for ongoing maintenance, and rehabilitation.

(4) "Designated Examiner" is defined in Subsection 62A-15-602(5).

(5) "Emergency medical service personnel" means an individual who provides emergency medical services to a patient and is required to be licensed under Section 26-8a-302, which includes:

(a) paramedics,

(b) medical directors of a licensed emergency medical service provider,

(c) emergency medical service instructors,

(d) and other categories established by the committee.

(6) "MCOT certification" means the certification created in Section R523-18-5.

(7) "MCOT personnel" means a licensed mental health therapist as defined in Subsection 58-60-102(5) and a certified crisis worker.

(8) "Mental Health Crisis" means any intense behavioral, emotional, or psychiatric situation perceived to be a crisis by the individual or family experiencing the crisis, or others who closely observe the individual where:

(a) the crisis manifests itself by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention or intervention to result in:

(i) serious jeopardy to the individual's health or well-being, or

(b) a danger to others, or

(c) significantly reduced levels of functioning in primary activities of daily living, including interfering with the ability to

go to school, work, and engage in meaningful relationships.

(9) "Mental health crisis services" means mental health services and on-site interventions that a person renders to an individual suffering from a mental health crisis. This includes the provision of:

(a) safety and care plans,

(b) stabilization services that are offered for a minimum of 60 days, and

(c) referrals to other community resources.

(10) "Mobile Crisis Outreach Team" means a mobile team of medical and MCOT personnel that provide mental health crisis services and, based on the individual circumstances of each case, coordinates with local law enforcement, emergency medical service personnel, and other appropriate state or local resources. Medical professionals may serve in a response or oversight role on the team.

(11) "Mental Health Officer" means an individual who is designated by a Local Mental Health Authority as qualified by training and experience in the recognition and identification of mental illness.

(12) "Mental Health Therapist" means an individual licensed in Utah under the mental health professional practice act as defined in Subsection 58-60-102(5).

(13) "Peer Support Specialist (PSS)" means an individual who meet the requirements outlined in R523-5.

(14) "Family Resource Facilitator (FRF)" means an individual who meets the requirements outlined in R523-6.

R523-18-4. General Provisions.

(1) MCOT services are based on the following principles:

(a) cultural competence,

(b) strong community relationships,

(c) the use of peer supports,

(d) the use of evidence based practices,

(e) building on existing foundations with an eye towards innovation,

(f) utilization of an integrated system of care,

(g) outreach to students through school-based clinics,

(h) trauma informed care,

(i) de-escalation,

(j) access to supports and services is timely,

(k) services are provided in the least restrictive manner possible,

(l) crisis is defined by the individual or family,

(m) treatment plans are strengths-based, and

(n) helping the individual and family to regain a sense of control and safety is a priority.

(2) MCOTs must be capable of serving in the context of a crisis as outlined below:

(a) children, adolescents, adults and older adults,

(b) individuals with co-occurring conditions including:

(i) mental health conditions,

(ii) substance use disorders,

(iii) medical needs,

(iv) intellectual/developmental disabilities,

(v) physical disabilities,

(vi) traumatic brain injuries; and/or,

(vii) dementia and related neurological conditions.

(c) individuals demonstrating aggressive behavior,

(d) individuals who are uninsured or unable to pay for services, and

(e) individuals who may lack Utah residency or legal immigration status.

(3) MCOTs shall encourage each modality of service within the Crisis Response System to incorporate peer support into the services they provide, when clinically appropriate.

R523-18-5. Minimum Guidelines and Standards of Care.

(1) Mobile crisis services provide a timely in-person

response to a crisis in the community. Mobile crisis services shall collaborate with local and statewide crisis line services, and any additional crisis response services, including the stabilization and mobile response services if available.

(2) When a MCOT is dispatched from the statewide crisis line, the statewide crisis line staff shall provide whenever possible the:

- (a) the name of individual in crisis,
- (b) their date of birth,
- (c) the presenting problem as demonstrated through the individual's current behaviors),
- (d) the location of the individual needing services,
- (e) any history of violence and/or substance use,
- (f) the presence of any weapons and/or dogs in the house,

and

- (g) the need for a coordination plan to include police assistance, and/or family's willingness to helping coordinate services while accounting for all relevant safety and security issues, so the MCOT can provide a timely face to face response.

(3) When law enforcement requests response from a MCOT, and is staying on scene, it is important to provide as rapid as a response as possible which may mean, responding to the crisis with limited information.

(4) A MCOT must have the capacity to:

- (a) intervene wherever the crisis occurs,
- (b) serve individuals unknown to the system,
- (c) coordinate multiple simultaneous requests for services

and,

- (d) work closely with police, EMS, Fire, dispatch, crisis hotlines, schools, hospital emergency departments, and other related agencies.

(5) A MCOT must operate 24 hours per day, 7 days per week, and 365 days per year in providing community-based crisis intervention, screening, assessment, and referrals to appropriate resources.

(6) In screening the individual in crisis, the MCOT must collect at least the following information:

- (a) identifying information,
 - (b) the chief complaint/presenting problem,
 - (c) acute medical concerns and chronic health conditions,
- and
- (d) current healthcare providers.

(7) The MCOT must administer an ongoing assessment, if clinically indicated by the initial screening, that shall include:

- (a) any imminent danger to the individual in crisis through potentially lethal means of harm to one's self or others.
- (b) risk for suicide using the Columbia Suicide Severity Rating Scale (C-SSRS) or another empirically validated instrument,
- (c) the individual's emotional status and imminent psychosocial needs,
- (d) individual strengths and available coping mechanisms,
- (e) resources that can increase service participation and success, and
- (f) the most appropriate and least restrictive service alternative for the individual, and the referral mechanisms and procedures to access services.

(8) Following the assessment, if there is risk for harm to self or others, the MCOT shall engage the person to establish a crisis response plan using:

- (a) Crisis Response Planning (CRP),
- (b) Stanley Brown Safety Plan, or
- (c) another evidenced based safety plan/crisis prevention practice.

(9) If clinically indicated access ER or other crisis receiving facility to address ongoing safety concerns and for further evaluation.

(10) A MCOT must be staffed by skilled and licensed mental health professionals.

(11) A MCOT must understand the emergency civil commitment process as described in Section 62A-15-629, and one of the members must be either a Designated Examiner or Mental Health Officer to facilitate civil commitment should that be the indicated course of action for the safety of the individual, family or the community.

(12) A MCOT will preferably utilize Certified Peer Support Specialists and Family Resource Facilitators, in conjunction with a Mental Health Therapist when deploying for mobile crisis outreach.

(13) A MCOT shall respond to individuals in the community who are in crisis with the goal of resolving the crisis in the least restrictive manner and setting, including:

- (a) reducing inpatient treatment admissions and Emergency Department visits if appropriate,
- (b) increasing jail diversions, and
- (c) reducing law enforcement involvement while maintaining public safety.

(14) A MCOT shall collaborate with stakeholders involved in the crisis service delivery system and partner to resolve service delivery concerns.

(15) MCOT providers shall have a published plan in place that outlines triage policies and coordination of crisis response services with community stakeholders.

(a) The plan shall address community collaboration with the following partners at minimum:

- (i) Local Mental Health and Substance Abuse Authorities,
- (ii) SMR providers,
- (iii) local law enforcement,
- (iv) fire departments,
- (v) dispatch,
- (vi) hospital emergency departments,
- (vii) schools,
- (viii) EMS,
- (ix) Department of Human Services agencies, and
- (x) other social service partners, including health plans and other crisis services in the local community.

(16) The MCOT provider shall enter into MOU's with each Local Mental Health and Substance Abuse Authority operating a crisis line in their region, and the Statewide Crisis Line. The MOU shall include the following elements at a minimum:

- (a) data sharing process between Statewide Crisis Line, Local Authority and MCOT provider including data on number of callers from region MCOT serves,
- (b) mobile deployments from the Statewide Crisis Line,
- (c) a clear procedure for coordination between the Statewide Crisis Line and MCOT provider, for deploying MCOT services for individuals in need of MCOT services who have called into the Statewide Crisis Line,
- (d) data and a process for warm hand offs between Statewide Crisis Line, MCOT, and Local Authorities to support individuals in ongoing services; and
- (e) procedures for case consultation on services, high utilizers, and collaboration.

R523-18-6. MCOT Personnel and Team Certification.

(1) The Following requirements shall be met in order for an agency to receive a certification of their MCOT:

(a) personnel shall consist of a minimum of two members, one of which shall be a:

- (i) Mental Health Therapist who is a Certified Crisis Worker, and is either a:
 - (A) Designated Examiner, or
 - (B) a Mental Health Officer.

(b) the second member shall be a Certified Crisis Worker, who is preferably a Certified Peer Support Specialist or a Family Resource Facilitator.

(c) All teams shall have access to a Designated Examiner

and a medical professional for consultation during the MCOT response.

(2) Agencies shall apply for participation and funding in MCOT activities through a Request For Proposal process that requires:

- (a) submitting a plan that describes service delivery and team make-up,
- (b) submitting a plan for meeting minimum guidelines and standards of care as outlined in this rule, and
- (c) evidence that the statutory match requirement of 20% will be met.

(3) The division shall provide certification to applicant agencies after review of the submitted materials demonstrate that the plan of care and team make up meet the guidelines set forth in this rule.

R523-18-7. Division Oversight of Programs.

(1) The division may enter and survey the physical facility, program operations, and review curriculum and interview staff of a certified MCOT agency, to determine compliance with this rule or any applicable contract to provide such services.

(2) Participating organizations including Local Authorities and the Statewide Crisis Line shall, allow representatives from the division and from the local authorities as authorized by the division to monitor services. Such visits may be announced or unannounced.

R523-18-8. Revocation of Certification.

(1) MCOT shall maintain its certification by meeting the guidelines set forth in this rule.

(2) The Division shall review all complaints related to an MCOT that is not meeting the guidelines set forth in this rule.

(3) The Division shall refuse to certify, suspend, revoke, or renew a certification to any MCOT that is found to have a substantiated complaint.

(4) An MCOT that has been served a Notice of Agency Action that the certification has been suspended, revoked, or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.

(5) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(6) The MCOT certification shall be posted and available upon request.

**KEY: mobile crisis outreach team, MCOT standards, statewide crisis response standards
November 15, 2018**

**62A-15-116(4)
62A-15-1402**

R527. Human Services, Recovery Services.**R527-38. Unenforceable Cases.****R527-38-1. 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 establish the criteria which a support case must satisfy to be categorized as unenforceable pursuant to 45 CFR 303.11.

R527-38-2. Unenforceable Case Criteria.

1. All of the following criteria must be met for a support case to be categorized as unenforceable:

a. The case is currently not a paying case; in that payments shall not have been posted to the case during the last 12 months; and payments are not expected to be posted in the near future.

b. No federal offset money has been received by the Office of Recovery Services (ORS) during the last two years.

c. No state tax money shall have been received by ORS within the most recent two years.

d. ORS shall have collected \$1,000 or less on the case over the last two years by methods other than federal offset or state tax.

e. There are no financial institution accounts belonging to the non-custodial parent that can be attached.

f. No executable assets belonging to the non-custodial parent have been identified.

g. If the matter concerns a Title IV-E case, all of the children identified as being part of the case shall have been emancipated or parental rights shall have been terminated.

KEY: child support**March 25, 2013****Notice of Continuation November 26, 2018****45 CFR 303.11****62A-1-111****62A-11-107**

R592. Insurance, Title and Escrow Commission.
R592-10. Title Insurance Regulation Assessment for Agency Title Insurance Producers and Title Insurers.

R592-10-1. Authority.

This rule is promulgated by the Title and Escrow Commission (Commission) pursuant to Subsections:

- (1) 31A-2-404(2)(d) which requires the Commission to determine by rule the assessment required by 31A-23a-415; and
- (2) 31A-23a-415(2)(d) which requires the Commission to establish the amount of costs and expenses that will be covered by the assessment.

R592-10-2. Purpose and Scope.

- (1) The purposes of this rule are to:
 - (a) establish the categories of costs and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23a, Parts IV and V related to the marketing of title insurance and the audits of agency title insurance producers;
 - (b) require the reporting by an agency title insurance producer and a title insurer of the mailing address and physical location of each office in each county where the agency title insurance producer or title insurer maintains an office;
 - (c) establish a calculation method for the calculation of the number of agency title insurance producer or title insurer offices; and
 - (d) determine the premium year used in calculating the assessment of title insurers.
- (2) This rule applies to all title insurers and agency title insurance producers.

R592-10-3. Definitions.

- (1) For the purpose of the rule the Commission adopts the definitions as set forth in Sections 31A-1-301, 31A-2-402, and the following:
 - (a) "Office" means each physical location of an agency title insurance producer or a title insurer in a county. Office includes any physical location that is open and available to the public.

R592-10-4. Costs and Expenses.

The amount of costs and expenses that will be covered by the assessment imposed by 31A-23a-415 for any fiscal year in which an assessment exists:

- (1) will be for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature, including any approved salary increases or increases in benefits; and
- (2) will include the following expenses:
 - (a) salary and state paid benefits;
 - (b) travel expenses, including daily vehicle expenses;
 - (c) computer hardware and software expenses;
 - (d) e-commerce expenses;
 - (e) wireless communications expenses; and
 - (f) training expenses.

R592-10-5. Office Report.

- (1) An agency title insurance producer and a title insurer shall submit a completed Office Report Form not later than 30 days after the date a change described below occurs in a county where the agency title insurance producer or title insurer maintains an office:
 - (a) the opening or closing of an office; or
 - (b) a change of address of an office.
- (2) An Office Report Form shall be submitted electronically via email to licensing.uid@utah.gov.
- (3) The department's Office Report Form, which is available on the department's website, shall be used to report changes in offices.

(a) An actual copy of the form may be used or may be adapted to a particular word processing system.

(b) If adapted, the content, size, font, and format must be similar.

R592-10-6. Calculation Method for the Calculation of the Number of Agency Title Insurance Producer Offices.

- (1) All offices reported in accordance with Section R592-10-5 will be included in the calculation of the title insurance assessment.
- (2) An annual assessment calculation for an agency title insurance producer or title insurer that is calculated using incorrect numbers of offices because the number of offices was incorrectly reported will not be recalculated.
- (3) An agency title insurance producer or title insurer found to have improperly reported their offices may be subject to penalties in accordance with Section R592-10-9.

R592-10-7. Premium Year for Title Insurer Assessment.

- (1) The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year.
- (2) The direct premiums written shall be taken from the insurer's annual statements for that year.

R592-10-8. Assessment Payment.

- (1) An annual assessment shall be paid by the due date on the invoice.
- (2) Payments shall be made in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-10-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R592-10-10. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R592-10-11. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will 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: title insurance

November 9, 2018

Notice of Continuation July 10, 2018

31A-2-201

31A-23a-415

R597. Judicial Performance Evaluation Commission, Administration.**R597-3. Judicial Performance Evaluations.****R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends on September 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends on September 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends on September 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(g) Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a respondent, but in no event shall any respondent receive more than nine survey requests.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents.

(A) Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle.

(B) Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(C) Within 10 business days of the end of the evaluation cycle, the Office of the Professional Conduct shall identify all judges who have referred an attorney for allegations of

misconduct.

(D) An attorney who has been referred by a judge to the Office of Professional Conduct shall be excluded from the attorney pool of the referring judge.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) central staff attorneys;

(I) juvenile probation and intake officers;

(J) other courthouse staff, as appropriate;

(K) Administrative Office of the Courts staff.

(d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services

on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(iii) Courtroom observers, though volunteers, may be eligible to receive compensation in exchange for successful completion of a specified amount of additional courtroom observation work.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) persons whose background or experience suggests they may have a bias that would prevent them from objectively

servicing in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by the totality of the circumstances that the judge's conduct in court promotes procedural fairness for court participants. To determine if the judge meets the minimum performance standard of procedural fairness:

(i) commissioners shall consider only data collected as part of the judge's performance evaluation, pursuant to 78A-12-203(2).

(ii) the standard shall be commensurate with the standard set forth for scored minimum performance standards on the judicial performance survey, as in 78A-12-205(1)(b)(i).

(iii) commissioners shall vote, with a majority of the quorum constituting the decision of the commission.

(iv) the outcome of the vote shall establish the rebuttable presumption as it applies to procedural fairness, in accordance with 78A-12-203(4)(b).

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than March 1st of the year in which the judge's name appears on the ballot.

(3) Comments received after March 1st of the year in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.

(4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.

(5) Persons submitting comments may choose whether to include their name and contact information with their submission.

(6) All public comments are subject to GRAMA, pursuant to 78A-12-206(1).

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge until the judge:

(a) provides written notice of resignation or retirement to the Governor;

(b) is removed from office;

(c) otherwise vacates the judicial office; or

(d) fails to properly file for retention.

(2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

R597-3-7. Publication of Retention Reports.

No later than three months after the filing deadline for a retention election, the commission shall post on its website the retention reports of all judges who have filed for that election.

R597-3-8. Judicial Written Statements.

If, pursuant to Utah Code Ann. Subsection 78A-12-206(3), a judge is eligible to provide a written statement to be included in the judge's evaluation report, the statement shall be due to commission staff, in writing, no later than one week after the deadline for the judge to file a declaration of the judge's candidacy in the retention election.

R597-3-9. Judicial Discipline.

(1) For the purposes of judicial performance evaluation and pursuant to Utah Code Ann. Section 78A-12-205, the commission shall consider any public sanction of a judge issued by the Supreme Court during the judge's current term, including:

(a) During the judge's midterm and retention evaluation cycles and

(b) After the end of the judge's retention evaluation cycle until the commission votes whether to recommend the judge for retention.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

November 7, 2018

Notice of Continuation February 17, 2014

78A-12

R602. Labor Commission, Adjudication.
R602-7. Adjudication of Discrimination Claims.
R602-7-1. Statutory Authority.

Section 34A-5-107(5)(c) provides a right for a person filing a charge of discrimination with the Utah Antidiscrimination and Labor Division to file a written request to the Division of Adjudication for an evidentiary hearing to review de novo a determination and order issued by the Utah Antidiscrimination and Labor Division. Section 34A-5-107(13) authorizes the Labor Commission to establish rules governing these proceedings.

R602-7-2. Applicability of Rule.

The provisions of R602-7 pertaining to requests for hearing pursuant Section 34A-5-107 (5) (c) supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-8 as to any actions brought pursuant to Section 34A-5-107 (5) (c).

R602-7-3. Adjudication of Actions Commenced Pursuant to Section 34A-5-107(5)(c).

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Request for De Novo Review" pursuant to Section 34A-5-107(5)(c) means a written request filed with the Commission and directed to the Division requesting de novo review of a specific Determination and Order issued by the Utah Antidiscrimination and Labor Division and shall include the following:

A. the name, mailing address, electronic address and telephone number of the party seeking de novo review and of their attorney, if applicable.

B. the name, mailing address, electronic address and telephone number of the opposing parties and of their attorney if applicable.

C. the date the Determination and Order was issued by the Utah Antidiscrimination Division.

D. a request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

iv. "Petitioner" means the charging party in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

v. "Respondent" means the respondent in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

b. Scheduling Conference and Order.

Upon receipt of the Request for De Novo Review the Division may schedule a scheduling conference to be attended by the parties and, where required by R602-1-3.1, their attorneys. The Division will issue a Scheduling Order containing deadlines and requirements for the filing of Petitioner's Statement, deadlines and requirements for the filing of Respondent's Answer, discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Respondent's Answer.

The Respondent's Answer shall include:

i. the name, mailing address, electronic address and telephone number of the party;

ii. the Adjudication Division's file number;

iii. the name of the adjudicative proceeding;

iv. an admission or denial of the specific facts alleged by the Petitioner.

v. any affirmative defenses relied on by the Respondent

and specific facts in support of the affirmative defenses.

vi. a statement summarizing the reasons that the relief requested by the Petitioner should be denied.

vii. the signature of the person filing Respondent's Answer.

d. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of damages claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. Unless otherwise stipulated by the parties or ordered by the administrative law judge, the disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures and other discovery. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures and discovery shall be made in writing, signed and served. Discovery and disclosure documents may be delivered by electronic means.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

(Aa) Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a

statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C.P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate

intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty reasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Respondent's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form or requirement for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon his or her own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas.

Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302(c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

d. Notices

i. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

ii. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

2. Motions - Time to Respond.

Unless otherwise provided by statute or the Administrative Law Judge, responses to all motions shall be filed within ten (10) days from the date the motion was filed with the Adjudication Division.

R602-7-4. Hearings.

1. Evidentiary hearings shall be conducted formally in accordance with Utah Code Section 63G-4-206. The petitioner shall have the burden of proving the claim of discrimination by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208 and Utah Administrative Rule R602-1-4.

2. In those cases where the Utah Antidiscrimination and Labor Division in its Determination and Order made a reasonable cause finding, the Utah Antidiscrimination and Labor Division shall be given an opportunity at the evidentiary hearing to briefly outline the basis of its Determination. The presentation by the Utah Antidiscrimination and Labor Division shall not be considered evidence by the administrative law judge in issuing an order.

R602-7-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Division in accordance with the provisions of Utah Code Subsection 34A-5-107 (11), 63G-4-301 and Utah Administrative Rule R602-1-4. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental

Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-7-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petition for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401 and Utah Administrative Rule R602-1-4.

KEY: discrimination, administrative procedures, hearings, settlements

June 22, 2011

34A-5-107

Notice of Continuation November 26, 2018 3G-4-102 et seq.

R602. Labor Commission, Adjudication.**R602-8. Adjudication of Utah Occupational Safety and Health Citation Claims.****R602-8-1. Statutory Authority.**

Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 provide that an administrative law judge from the Division of Adjudication shall hear and determine timely filed contests of citations issued by Utah Occupational Safety and Health. Sections 34A-1-304, 34A-6-104(1)(c) and 34A-6-301(7)(a) authorize the Labor Commission to promulgate rules governing these proceedings.

R602-8-2. Applicability of Rule.

The provisions of R602-8 pertaining to requests for hearing pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-7 as to any actions brought pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

R602-8-3. Adjudication of Actions Commenced Pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

- I. Pleadings and Discovery.
 - a. Definitions.
 - i. "Commission" means the Labor Commission.
 - ii. "Division" means the Division of Adjudication within the Labor Commission.
 - iii. "Notice of Contest" pursuant to Section 34A-6-303 means a written request filed with the Commission and directed to the Division requesting an evidentiary hearing on a citation issued by the Utah Occupational Safety and Health Division and shall include the following:
 - A. the name, mailing address, electronic address and telephone number of the party filing the Notice of Contest and that of their attorney, if applicable.
 - B. the date and number of the citation issued by the Utah Occupational Safety and Health Division.
 - C. An admission or denial of the specific facts alleged in support of each violation alleged in the citation and a statement of agreement or disagreement with each proposed penalty set forth in the citation.
 - D. Any affirmative defenses relied on by the cited party and specific facts in support of the affirmative defenses.
 - E. A request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.
 - F. A statement requesting or declining an informal conference with the Administrator of Utah Occupational Safety and Health Division.
 - iv. "Petitioner" means Utah Occupational Safety and Health Division.
 - v. "Respondent" means the person or entity cited by Utah Occupational Safety and Health Division.
 - b. Scheduling Conference and Order.

Upon receipt of the Notice of Contest the Division may schedule a scheduling conference to be attended by the parties and, where required by R602-1-3.1, their attorneys. The Division will issue a Scheduling Order containing deadlines and requirements for the litigation including discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

 - c. Discovery.
 - i.(A) Required disclosures; Discovery methods.
 - I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:
 - Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;
 - Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;
 - Cc. a computation of any category of fines or penalties claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
 - Dd. The disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.
 - II. Disclosure of expert testimony.
 - Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.
 - Bb. Unless otherwise stipulated by the parties or ordered by the Administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.
 - III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:
 - Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;
 - Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.
 - Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.
 - IV. Form of disclosures and other discovery. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures and discovery shall be made in writing, signed and served. Discovery and disclosure documents may be delivered by electronic means.
 - V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.
 - B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:
 - I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or

defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

Aa. Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

Aa. A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty reasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or

corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Petitioner's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas. Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302 (c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is

necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

2. Notices

a. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

b. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

3. Motions - Time to Respond.

Unless otherwise provided by statute or the Administrative Law Judge, response to all motions shall be filed within ten (10) days from the date the motion was filed with the Adjudication Division.

R602-8-4. Hearings.

Evidentiary hearing shall be conducted formally in accordance with Utah Code Section 63G-4-206. Petitioner shall have the burden of proving the factual and legal sufficiency of the citation and penalty by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208 and Utah Administrative Rule R602-1-4.

R602-8-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Utah Code Sections 34A-6-304, 63G-4-301 and Utah Administrative Rule R602-1-4. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-8-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petitioner for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401 and Utah Administrative Rule R602-1-4.

KEY: occupational safety and health, administrative procedures, hearings, settlements

June 22, 2011

34A-6-105

Notice of Continuation November 26, 2018

34A-6-303

34A-6-304

63G-4-102 et seq.

R708. Public Safety, Driver License.**R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.****R708-14-1. Purpose.**

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for alcohol and drug adjudicative proceedings.

R708-14-2. Authority.

This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1).

R708-14-3. Definitions.

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

(2) In addition;

(a) "division" means the Driver License Division of the Utah Department of Public Safety;

(b) "division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders;

(c) "hearing" means an alcohol or drug adjudicative proceeding where evidence is considered to determine an issue of fact;

(d) "hearing officer" means a division employee with authority to conduct a hearing; and

(e) "recording" means documenting, by electronic or other means, the testimony or information presented at an alcohol or drug adjudicative proceeding.

R708-14-4. Designations.

(1) In compliance with Section 63G-4-202, all division alcohol and drug adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

(3) The driver may represent himself or be represented by a State Licensed attorney in the adjudicative proceeding.

R708-14-5. Authority for Conducting Adjudicative Proceedings.

Alcohol and drug adjudicative proceedings will be conducted in accordance with Sections 41-6a-521, 53-3-223, 53-3-231, 53-3-418, 63G-4-203, and this rule.

R708-14-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-201, alcohol and drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63G-4-201(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the petitioner's full name, date of birth, and the date of arrest or occurrence which prompted the request for division action.

R708-14-7. Alcohol and Drug Adjudicative Proceedings.

The alcohol and drug adjudicative proceedings deal with the following types of hearings:

(a) driving under the influence of alcohol or drugs (per-se),

Section 53-3-223;

(b) implied consent (refusal), Section 41-6a-520;

(c) measurable metabolite in body, Section 41-6a-517;

(d) consumption by a minor (not a drop), Section 53-3-231; and

(e) CDL (.04), Section 53-3-418.

R708-14-8. Hearing Procedures.

(1) Alcohol and drug adjudicative proceedings will be held in the county of arrest or a county which is adjacent to the county in which the offense occurred, at a time and place designated by the division, or agreed upon by the parties.

(2) Notice shall be given as provided in Subsection 53-3-216(4) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The notice need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are deemed to have knowledge of the law.

(3) If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The hearing officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The hearing officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) The driver shall have access to information in the division file to the extent permitted by law.

(6) Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) The hearing officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the hearing officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) The hearing officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) audio record or take notes of the hearing at his discretion; and

(e) take appropriate measures to preserve the integrity of the hearing.

(9) The hearing officer shall make a recommendation to the presiding officer regarding action to be taken following the hearing.

R708-14-9. Findings, Conclusions, Recommendations and Orders.

(1) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on forms that utilize a system of check boxes and fill in blanks.

(2) Within a reasonable period of time after the close of the hearing, the completed recommendation form will be transmitted to the presiding officer for the preparation of an order that complies with Subsection 63G-4-203(1)(i).

R708-14-10. Reconsideration.

In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration,

the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63G-4-402.

KEY: adjudicative proceedings

November 1, 2018

53-3-104

Notice of Continuation January 8, 2017

63G-4-203(1)

**R728. Public Safety, Peace Officers Standards and Training.
R728-503. Utah Minimum Standards for All Emergency Pursuit Policies to be Adopted by Public Agencies that Operate Authorized Emergency Pursuit Vehicles.**

R728-503-1. Authority.

- (1) This rule establishes minimum standards for all emergency pursuit policies to be adopted by public agencies authorized to operate authorized emergency pursuit vehicles.
- (2) This rule is authorized by Subsection 41-6a-212(5).

R728-503-2. Definitions.

- (1) Terms in this rule are defined in Section 41-6a-102.
- (2) In addition:
 - (a) "agency emergency pursuit policy" means the written principles by which a Utah individual public agency that operates authorized emergency pursuit vehicles is guided in the management of its affairs concerning whether to, and how to, engage and disengage in the pursuit of a suspect by vehicle.
 - (b) "authorized emergency pursuit vehicle" means law enforcement vehicle, either marked or unmarked, properly equipped with audible sirens and visual lights owned and operated by a public agency.
 - (c) "back-up unit" means each authorized emergency pursuit vehicle assisting the primary unit.
 - (d) "balance test" means that a law enforcement officer shall act as a reasonably prudent emergency vehicle operator in like circumstances while making an ongoing decision process to analyze the risk of initiating, continuing, and terminating pursuit given the following considerations:
 - (i) the need to apprehend a fugitive who presents a danger to others because the serious and violent nature of the crime for which the fugitive is sought or because the fugitive's driving presents a threat to the public safety that may outweigh the risks that a pursuit poses to others; and
 - (ii) the need to avoid pursuit if the threat of public or officer safety is greater than the need for immediately apprehending the suspect.
 - (e) "boxing-in" means a technique designed to stop a violator's vehicle by surrounding it with authorized emergency pursuit vehicles and then slowing all vehicles to a stop.
 - (f) "channelization" means a technique where objects are placed in the anticipated or actual path of a pursued vehicle which tend to alter the vehicle's intended direction of travel.
 - (g) "intervention techniques" means specific operational tactics including immobilization, channelization, ramming, boxing-in, roadblock procedures, tire deflation devices (spike strips, etc.) which are intended to disable fleeing vehicles or otherwise prevent further flight or escape.
 - (h) "paralleling" means participating in the pursuit by proceeding in the same direction and maintaining approximately the same speed while traveling on an alternate street or highway that parallels the pursuit route.
 - (i) "primary unit" means the authorized emergency pursuit vehicle that initiates a pursuit or assumes control of the pursuit as the lead vehicle or the first authorized emergency pursuit vehicle immediately behind the fleeing suspect.
 - (j) "supervisor" means a law enforcement officer who, by virtue of rank or assignment, is responsible for the direction or supervision of the activities of other law enforcement officers.

R728-503-3. Purpose.

- (1)(a) The purpose of this rule is to provide minimum standards, below which, the individualized law enforcement agency emergency pursuit policy may not legally go.
- (b) It is not the intent nor legal purpose of these minimum standards to be exhaustive or all inclusive on this subject.
- (2) As law enforcement officers consider the balance test, these minimum standards assist in training as well as providing a threshold for the law enforcement officer while analyzing the

balance test in actual field situations.

(3)(a) The department establishes these minimum standards to assist each agency develop its own agency emergency pursuit policy.

(b) While implementing and revising an agency emergency pursuit policy, each agency shall use these minimum standards as a starting point and then individualize its agency emergency pursuit policy as needed.

R728-503-4. Initiating Pursuit Policy.

- (1) Each law enforcement officer shall consider the balance test prior to engaging in an emergency vehicle pursuit.
- (2) Each law enforcement officer in an authorized emergency pursuit vehicle may initiate a vehicular pursuit when the suspect exhibits the intention to avoid apprehension by refusing to stop when properly directed to do so.
- (3) In deciding whether to initiate pursuit, the law enforcement officer may take into consideration:
 - (a) road, weather, and environmental conditions;
 - (b) population density and vehicular and pedestrian traffic;
 - (c) the relative performance capabilities of the pursuit vehicle and driver and the suspect vehicle being pursued;
 - (d) the seriousness of the offense;
 - (e) likelihood of pursuit resulting in apprehension;
 - (f) familiarity with the area and road; and
 - (g) any other pertinent factors.

R728-503-5. Pursuit Operations Policy.

- (1) When initiating pursuit, each authorized emergency pursuit vehicle shall activate appropriate warning equipment including an audible signal or visual signal visible to the front of the pursuing vehicle.
- (2) When initiating pursuit and when reasonably possible during the pursuit the law enforcement officer shall notify communications of:
 - (a) the location, direction, and speed of the pursuit;
 - (b) the description of the pursued vehicle including suspects and occupants; and
 - (c) the reason for the pursuit.
- (3) When reasonably possible the law enforcement officer shall keep communications updated on the pursuit.
- (4) When reasonably possible, communications personnel shall:
 - (a) notify any available agency supervisor of the pursuit;
 - (b) clear the radio channel of non-emergency traffic; and
 - (c) relay necessary information to other law enforcement officers and jurisdictions.
- (5) When reasonably possible, units and supervisors involved in the pursuit shall use a single statewide or regional radio channel that communications may restrict to pursuit communications.
- (6) Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles, a primary and a back-up unit. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor. No unit shall pass another unit involved in the pursuit unless specifically requested to do so or it is otherwise considered necessary.
- (7) The primary unit shall become back-up when the pursued vehicle comes under air surveillance, if available, or when another unit is assigned primary responsibility.

R728-503-6. Supervisory Responsibilities.

- (1) As with any critical law enforcement incident, it may not be necessary for the supervisor to be present in order to begin exercising management and control of the pursuit.
- (2) When reasonably possible, the supervisor shall not actually be engaged in the pursuit itself.
- (3) Each supervisor shall consider the balance test prior to authorizing the pursuit or its continuance.

- (4) When reasonably possible each supervisor shall:
 - (a) monitor incoming information;
 - (b) coordinate and direct activities;
 - (c) appropriately limit the number of pursuing units; and
 - (d) ensure notification of law enforcement agencies into whose jurisdiction the pursuit is likely to enter.
- (5) A supervisor shall have the discretion to terminate the pursuit.

R728-503-7. Pursuit Tactics.

- (1) When reasonably possible, authorized emergency pursuit vehicles having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by an unmarked patrol unit, such unit shall relinquish the pursuit to a marked patrol unit as soon as practical.
- (2) Intervention techniques shall be used only when it is possible to do so safely and when the law enforcement officers using them have received training in their use.
- (3) There shall be no paralleling the pursuit route.
- (4) Motorcycles may be used for pursuit in exigent circumstances and when weather and related conditions allow. They shall relinquish the pursuit to a marked patrol unit as soon as practical.
- (5) Roadblocks may not be used unless the circumstances would warrant the use of deadly force.
 - (a) When reasonably possible, roadblocks shall only be created with a supervisor's approval.
 - (b) When a roadblock is created, law enforcement officers shall:
 - (i) allow for reasonable stopping distance;
 - (ii) place the roadblock in a position that is reasonably visible;
 - (iii) reasonably ensure the safety of non-involved pedestrians and motorists; and
 - (iv) not place themselves or their vehicle in a position to jeopardize their own safety.
- (6) Decisions to discharge firearms at or from a moving vehicle shall be governed by the law enforcement agency's use of force policy and are prohibited when they present an unreasonable risk to others. These decisions shall first be authorized when reasonably possible by a supervisor.
- (7) When the pursued vehicle is stopped, law enforcement officers shall use appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.

R728-503-8. Interjurisdictional Pursuits.

- (1) Chapter 77-9, the Uniform Act on Fresh Pursuit, governs Rule R728-503-8 as applicable.
- (2) The primary unit shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction or across the county or state line.
- (3) When possible, the supervisor shall authorize inter-jurisdictional pursuit.
- (4) When a pursuit enters another jurisdiction, the action of law enforcement officers shall be governed by the policy of the law enforcement officers' own agency, specific inter-local agreements and state law as applicable.
- (5) Pursuit into a bordering state shall comply with the law of both states and any applicable inter-jurisdictional agreements.

R728-503-9. Termination of Pursuit.

- (1) The supervisor or the primary unit in absence of a supervisor shall continually re-evaluate the balance test to assess the pursuit situation.
 - (a) The supervisor may order the termination of a pursuit at any time.
 - (b) The primary unit may terminate the pursuit at any time.

- (2) A pursuit may be terminated under the following conditions:
 - (a) the suspect's identity has been determined and future apprehension is likely;
 - (b) air support is available to track the suspect;
 - (c) weather or traffic conditions substantially increase the danger of the pursuit beyond the necessity of apprehending the suspect;
 - (d) the distance between the suspect and pursuing vehicles makes further pursuit futile;
 - (e) immediate apprehension is not necessary to protect the public or law enforcement officers;
 - (f) the law enforcement officer is unfamiliar with the area and is unable to accurately communicate location and direction of pursuit; and
 - (g) the pursuit proceeds the wrong way on a limited access road, for example an interstate highway.
- (3) Termination of pursuit shall include deactivating the audible siren and visual light equipment, pulling the vehicle to the side of the road, and stopping.

R728-503-10. Training.

- (1) Law enforcement officers who drive emergency authorized pursuit vehicles shall receive initial minimum tactical pursuit training and initial training defined in Rule R728-503.
- (2) Pursuit training shall include details concerning the balance test and its application as to initiating and terminating pursuits.
- (3) Ongoing annual policy and procedure and case law review shall be required for law enforcement officers to assure they are knowledgeable with their own individual agencies emergency pursuit policy.

**KEY: pursuit, emergency vehicles, policy
November 25, 2008
Notice of Continuation November 12, 2018**

41-6a-212(5)

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
DS0 or analog equivalent, dispatch, facilities available:	1 - 24	5 days
	24 - n	negotiated
DS0 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 ILEC's 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 ILEC's 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
Notice of Continuation November 21, 2018**

54-8b-2

**R850. School and Institutional Trust Lands, Administration.
R850-61. Native American Grave Protection and Repatriation.****R850-61-100. Authorities.**

1. This rule implements Sections 6, 8, 10 and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Sections 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 53C-1-201(5)(b), provide policies for the ownership and control of Native American remains as defined in Section 9-9-402, that are discovered or excavated on school and institutional trust lands.

R850-61-200. Scope and Applicability.

1. This rule applies to all Native American remains found on school and institutional trust lands.

R850-61-300. Duties Upon Discovery of Remains.

1. Human remains are to be treated at all times with dignity and respect. Any person who discovers human remains on school and institutional trust lands must immediately cease all activity which might disturb the remains, take reasonable steps to protect the remains, and report the discovery to local law enforcement (in accordance with Section 76-9-704) and to the Director

2. If discontinuation of the activity is reasonable and prudent, and consistent with the Director's fiduciary responsibilities, the immediate site shall be restored and all activity in the area shall be re-routed or discontinued to limit any further disturbance to the site

3. If discontinuation is not reasonable or prudent, the agency shall follow the Utah Division of Indian Affairs' process (as contained in Utah Administrative Code R230-1) except when the Director concludes by written finding that:

(a) the determination of whether the remains in question are Native American, pursuant to U.A.C. R230-1-6(3), will unduly impact an authorized use of trust lands; or

(b) the time needed to prepare a preservation plan or the requirements of such a plan, pursuant to U.A.C. R230-1-7(1), will violate the fiduciary duty to the trust. When such a finding is made, the Director will assume control over the process.

4. Ownership or control of any Native American human remains that are excavated or removed from the site shall be determined pursuant to Utah Code Annotated Section 9-9-401 et seq.

KEY: cultural resources, Native American Grave Protection and Repatriation

November 17, 2003

53C-1-201(5)(b)

Notice of Continuation November 8, 2018

53C-1-302(1)(a)(ii)

53C-2-201(1)(a)

**R850. School and Institutional Trust Lands, Administration.
R850-110. Motor Vehicle Travel Designations.
R850-110-100. 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-2-301(1)(g) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules consistent with general policies prescribed by the board of trustees, and regulate the unauthorized use or occupation of trust land, and Subsection 41-22-10.1(2) which authorizes the agency to designate trails, streets, or highways as open to off-highway vehicle use.

R850-110-200. Travel Route Designations.

1. Pending detailed route designations, all routes upon which exist a temporary public easement pursuant to Subsection 72-5-203(1)(a), other valid legal easement or right-of-way, or a permanent public access easement granted pursuant to agency rules are designated as open to motor vehicle use to the extent that such use is permitted by state law and local ordinances.

2. The agency may establish "Designated Use Only" areas.

(a) All routes within a "Designated Use Only" area are closed to motor vehicle use unless specifically designated open by the agency or authorized for a specific use through the issuance of a permit, easement, or lease.

(b) "Designated Use Only" areas may be established by the director through a written finding that such action is consistent with trust management objectives, current and projected land uses, and resource protection considerations.

3. All lands administered by the agency are closed to cross-country travel by all motor vehicles other than over-snow vehicles unless otherwise designated open or authorized for a specific use through the issuance of a permit, easement, or lease.

4. Except as authorized under Subsections (1) through (3), all trust lands are closed to motor vehicle use.

R850-110-300. Route Designations on Roads Maintained by Local Government Entities.

The agency may coordinate route designations with local government entities on routes maintained by them.

R850-110-400. Over-snow Vehicles.

All lands are open to cross-country travel by over-snow vehicles provided that:

1. the use is consistent with state law and not in conflict with current leases or permits; and

2. adequate snow depth exists to prevent resource degradation. Adequate snow depth is generally accepted to be at least 12 inches of consistent snow cover, but may vary depending on terrain or other ground conditions. The determination of whether there is adequate snow depth to prevent resource degradation shall be at the sole discretion of the agency.

R850-110-500. Route Width Designations.

Routes which have been designated as open to motor vehicle use by the agency may further be designated to allow for certain width classes of OHVs.

1. Twenty-six inches or less. Only OHVs under 26 inches wide may utilize routes designated in this class.

2. Fifty-two inches or less. Only OHVs under 52 inches wide may utilize routes designated in this class.

3. Routes which do not have a designated width class are open to all motor vehicles, provided that the vehicle width does not exceed the existing disturbed travel surface of the route.

R850-110-600. Date and Time Restrictions.

Routes which have been designated as open to motor vehicle use or areas which have been designated by the agency

as open to cross-country travel, may be restricted to allow for use only within certain times of year or times of day.

R850-110-700. Other Route or Area Restrictions.

Additional restrictions or designations other than those specifically identified by rule may be placed upon routes or areas which have been designated as open to motor-vehicle use by the director. Such actions shall be authorized through a written finding by the director that the action is consistent with trust-management objectives, resource protection considerations, or other justified reasons.

R850-110-800. Method of Designating Travel Routes.

Travel routes may be designated as open to motor vehicle use and areas may be designated as open to cross-country travel by the director through a written finding that such action is consistent with trust-management objectives, current and projected land uses, and resource-protection considerations. Routes or areas that have been designated open to motor vehicle use by the director shall be identified as specified in Subsection 41-22-10.1 by posting signs or designating by map or description. Additional designations with respect to route widths, date and time restrictions, or other restrictions shall also be identified through posted signs, map, or description. Posted signs shall conform to accepted interagency statewide OHV trail signing standards, and maps may be published in cooperation with other land-management agencies where practicable.

R850-110-900. Director's Authority to Close Routes and Areas.

The director may close specific routes and areas to motorized vehicle use, regardless of any previous route designation, when necessary for resource protection, to fulfill trust-management objectives, or for other justified reasons. Such action shall be documented in a written finding by the director. Amendments shall be made to existing route designation maps or descriptions and signs posted as necessary.

R850-110-1000. Scattered Sections and Isolated Parcel Designations.

The agency may coordinate route designations with adjacent land-management agencies to reduce confusion over ownership boundaries and complications with enforcement. Agency land-use and management objectives may be carefully considered when negotiating with other land-management agencies.

R850-110-1100. Blocked Land Designations.

The agency may coordinate designations of shared routes with adjacent land-management agencies to the extent that such designations are consistent with agency management objectives. All other routes and areas contained within land blocks shall be designated in accordance with trust-management objectives, current and projected land uses, and resource protection considerations.

R850-110-1200. Off-Trail Game Retrieval.

Use of a motor vehicle for the retrieval of downed game off of a designated route is prohibited, unless located within an area which has been designated as open for cross-country travel.

R850-110-1300. Recreational Use Requiring a Lease or Permit.

1. Commercial recreational use of trust lands, including competitive events or use of trust lands by commercial outfitters or tour operators, will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

2. Long-term non-commercial recreational use of trust

lands exceeding 15 consecutive days will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

R850-110-1400. Exemptions.

The following uses are exempt from the restrictions and prohibitions set forth in this rule:

1. Administrative use by the agency.
2. Use in conjunction with the administration or operation of a valid lease or permit.
3. Use of any fire, military, emergency, or law-enforcement vehicle for emergency purposes.
4. Law-enforcement response to violations of law, including pursuit.

KEY: land use, leases, permits, roads

October 25, 2010 53C-1-302(1)(a)(ii)

Notice of Continuation November 8, 2018 53C-2-301(1)(g)

R865. Tax Commission, Auditing.**R865-91. Income Tax.****R865-91-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Sections 59-10-103 and 59-10-136.**

For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.

R865-91-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-1003.

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

(b) completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

(c) attaching any schedule completed under Subsection (2)(b) to the individual income tax return.

(3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

(4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-1003 by:

(a) filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

(b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

(a) the amount of tax paid to the other state; or

(b) a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

(6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

R865-91-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

(1) Except as provided in Subsection (2), a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate:

(a) state taxable income as follows:

(i) Determine the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse. Any adjustments

that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.

(ii) Allocate a portion of each deduction and add back item described in Section 59-10-114 to each spouse by:

(A) dividing each spouse's FAGI by the combined FAGI of both spouses, and rounding the resulting percentage to four decimal places; and

(B) multiplying the resulting percentage by any deductions and add back items described in Section 59-10-114; and

(b)(i) shares of the taxpayer tax credit authorized in Section 59-10-1018 by multiplying the percentage calculated under Subsection (1)(a)(ii)(A) by the:

(A) itemized or standard deduction; and

(B) state exemption for dependents.

(ii) For purposes of Subsection (1)(b)(i), each spouse shall claim his or her full state personal exemption.

(2) A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in Subsection (1) if they can demonstrate to the satisfaction of the commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-91-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

(1) Definitions.

(a) "AGI" means adjusted gross income, as defined by Section 59-10-103.

(b) "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

(2) The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as defined under Section 59-10-103. This percentage is the Utah portion of AGI divided by the total AGI, not to exceed 100 percent.

(3) The Utah portion of a part-year resident's AGI shall be determined as follows:

(a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI.

(b) Dividends actually or constructively received while in resident status shall be included in the Utah portion of AGI. Any dividend exclusion shall be deducted from the Utah portion of AGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

(c) All interest actually or constructively received while in resident status shall be included in the Utah portion of the AGI.

(d) All AGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of AGI.

(4)(a) Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of AGI:

(i) if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

(ii) if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

(b) Income or loss that does not meet Subsection (4)(a) shall be included in the Utah portion of AGI only to the extent the income or loss is derived from Utah sources as determined under Section 59-10-117.

(5) Moving expenses deducted on the federal return may

be deducted from the Utah portion of AGI only to the extent that they are for moving into Utah and within Utah.

(6) Employee business expenses may be deducted from the Utah portion of AGI only to the extent that they pertain to the production of income included in the Utah portion of AGI.

(7) Payments by a self-employed person to a retirement plan that reduce the total AGI may be deducted from the Utah portion of AGI in the same proportion that the related self-employment income is included in the Utah portion of FGI.

(8) Other income, losses or adjustments applicable in determining total AGI may be allowed or included in the Utah portion of AGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of Title 59, Chapter 10, Individual Income Tax Act, or these rules as determined by the commission.

R865-91-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-91-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;
2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;
3. compute the tax applicable to the state taxable income as annualized;
4. divide the tax as computed on the annualized state taxable income by 12; and
5. multiply the result by the number of months in the period involved.

R865-91-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-91-13. Pass-Through Entity Withholding Pursuant to

Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) A pass-through entity must withhold and pay over to the state a tax on:

(a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and

(b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.

(i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.

(ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

- (a) name;
- (b) address;
- (c) social security number;
- (d) percentage of ownership in pass-through entity;
- (e) Utah income attributable to that pass-through entity taxpayer; and

(f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

- (i) charitable contributions;
- (ii) total foreign taxes paid or accrued; and
- (iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.

(4) A pass-through entity shall calculate the tax it is required to withhold on behalf of pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.

(5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:

(i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(ii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or

(iii) a person exempt from state income tax under Section 59-10-104.1.

(6) For purposes of Subsections 59-10-1403.2(5) and (6),

a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

(8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,
2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;
2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;
2. the employer's Utah withholding tax account number;
3. the amount of compensation;
4. the amounts of federal and Utah state income tax withheld;
5. the social security number of the employee;
6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and
7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and
2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

(1) This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

(2) An employer may file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer files:

- (a) a federal Schedule H; or
- (b) a Form 944, Employer's ANNUAL Federal Tax Return, with the Internal Revenue Service.

(3) The annual withholding return and payment under Subsection (2) are due by January 31 of the year succeeding the year for which the payment and return apply.

(4) An employer withholding an average of \$1,000 or more per month shall prepay withholding taxes on a monthly basis in the manner prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-1-1406.

(1) Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

(2) Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All records shall be made available to an authorized agent of the commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed

except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown on the Utah forms TC-65 Schedule K and Schedule K-1.

(3) A partnership may satisfy the requirement to file a return with the commission by maintaining records that show each partner's share of income, losses, credits, and other distributive items, and making those records available for audit if:

- (a) all of the partnership's partners are resident individuals; and
- (b) the partnership is not a pass-through entity taxpayer.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper

used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-

1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-91-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-1006.

(1) Definitions

(a) "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

(b) "Qualified rehabilitation expenditures" does not include movable furnishings.

(c) "Residential" as used in Section 59-10-1006 applies only to the use of the building after the project is completed.

(2) Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

(3) Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

(4) In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

(a) The project approved under Subsection (2) must be completed.

(b) Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order

to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

(c) Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

(d) Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-10-1006 must be met, within 36 months of the approval received pursuant to Subsection (2).

(e) During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

(5) Upon issuing a certification number under Subsection (4), the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

(6) Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under Subsection (4).

(7) Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-1006.

(8) Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

(9) Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-91-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, and Title 59, Chapter 10, and Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by Section 59-6-102, Section 59-13-202, Section 59-13-301, Title 59, Chapter 10, and Title 63M, Chapter 1 against Utah individual income tax due in the following order:

(1) nonrefundable credits;

(2) nonrefundable credits with a carryforward;

(3) refundable credits.

R865-91-44. Mandatory Withholding of Income for Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

(1) Definitions.

(a) "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

(i) Duty days includes:

(A) days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in Subsection (1)(a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team; and

(B) game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(ii) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable

year, a separate duty day calculation shall be made for the period that person was with each team.

(iii) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

(iv) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

(v) Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

(b) "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

(c) "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team that is not incorporated or organized under the laws of this state.

(d) "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

(i) Total compensation does not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

(ii) For purposes of this rule, "bonuses" subject to the allocation procedures described in Subsection (5) are:

(A) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(B) bonuses paid for signing a contract, unless all of the following conditions are met:

(I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(II) the signing bonus is payable separately from the salary and any other compensation; and

(III) the signing bonus is nonrefundable.

(e) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

(i) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

(ii) during the taxable year on a date that does not fall within the period in Subsection (1)(e)(i), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

(2) The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

(3) If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

(4) A professional athletic team:

(a) is an employer for purposes of Title 59, Chapter 10, Part 4, Withholding of Tax; and

(b) may not be relieved from the requirements imposed on an employer under Title 59, Chapter 10, Part 4, Withholding of Tax.

(5) Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

(6) The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

(7)(a) Professional athletic teams shall withhold and remit tax on behalf of nonresident professional athletes on a form prescribed by the commission.

(b) A schedule shall be included with the return, listing all of the following information for each nonresident member of a professional athletic team:

(i) name;

(ii) address;

(iii) social security number;

(iv) income attributable to Utah for the nonresident member of a professional athletic team;

(v) total compensation paid to the nonresident member of a professional athletic team by the professional athletic team;

(vi) the nonresident member of a professional athletic team's duty days both within and without the state;

(vii) the nonresident member of a professional athletic team's duty days within the state;

(viii) Utah tax deducted and withheld; and

(ix) federal income tax deducted and withheld.

(8) A nonresident member of a professional athletic team is not required to file an individual income tax return if:

(a) the professional athletic team deducts and withholds a tax on behalf of the nonresident member of a professional athletic team;

(b) the nonresident member of a professional athletic team does not seek to claim a tax credit under Title 59, Chapter 10, Individual Income Tax Act; and

(c) the nonresident member of a professional athletic team does not have adjusted gross income derived from or connected with Utah sources other than the income the member of a professional athletic team receives from the professional athletic team.

R865-9I-46. Medical Savings Account Administration Pursuant to Utah Code Ann. Sections 31A-32a-106, 59-10-114, and 59-10-1021.

(1) Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

(2) In addition to the requirements of Subsection (1), account administrators shall file a form TC- 675M, Statement of

Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

- (a) the beginning balance in the account;
- (b) the amount contributed to the account;
- (c) the account's earnings;
- (d) distributions for qualified medical expenses;
- (e) distributions for non-medical expenses not subject to penalty;
- (f) distributions for non-medical expenses subject to penalty;
- (g) the amount of penalty required to be withheld and remitted to the state;
- (h) the account administrator's administrative fee charged to the account; and
- (i) the ending balance in the account.

(3) The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

(5) The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-91-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-91-23(C).

R865-91-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

- (a) the amount contributed to the trust by the account owner; and
- (b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before March 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-91-50. Addition to Adjusted Gross Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to adjusted gross income required under Section 59-10-114 for interest earned on bonds, notes, and other

evidences of indebtedness acquired on or after January 1, 2003 applies to:

(1) interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

(2) for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

R865-91-51. Withholding Tax License Pursuant to Utah Code Ann. Section 59-10-405.5.

(1) The holder of a license issued under Section 59-10-405.5 shall notify the commission:

- (a) of any change of address of the business;
- (b) of a change of character of the business, or
- (c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

- (a) mail is returned as undeliverable as addressed and unable to forward;
- (b) the person fails to file four consecutive monthly or quarterly withholding tax returns, or two consecutive annual withholding tax returns;
- (c) the person fails to renew its annual business license with the Department of Commerce; or
- (d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a withholding tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-10-405.5 shall be responsible for any withholding tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-91-52. Credit For Health Benefit Plan Insurance Pursuant to Utah Code Ann. Section 59-10-1023.

A credit for health benefit plan insurance under Section 59-10-1023 shall be determined in the manner that provides the greatest possible credit.

R865-91-53. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

- (a) marking the box on the taxpayer's individual income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and
- (b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required

to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-91-55. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-10-1403.

(1) "Qualified subchapter S subsidiary" is as defined in Section 1361(b), Internal Revenue Code.

(2) For purposes of Title 59, Chapter 10, Part 14, a pass-through entity that is a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

(3) A pass-through entity that is an S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

(4) For purposes of Title 59, Chapter 10, Part 14:

(a) the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

(b) the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

(5) Except as provided in Subsection (4), the apportionment fraction for a pass-through entity that is an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

KEY: historic preservation, income tax, tax returns, enterprise zones

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- Notice of Continuation November 10, 2016 53B-8a-112
- 59-1-1301 through 59-1-1309
- 59-2-1201
- through
- 59-2-1220
- 59-6-102
- 59-7-3
- 59-10
- 59-10-103
- 59-10-108
- through
- 59-10-122
- 59-10-108.5
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- 59-10-124
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- 59-10-207
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- 59-10-403
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- through
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63N-2-201 through 63N-2-215

R865. Tax Commission, Auditing.**R865-19S. Sales and Use Tax.****R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

(1) For purposes of this rule, "item" includes:

- (a) an admission;
- (b) a product transferred electronically;
- (c) a service; and
- (d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

- (a) separately states the tax exempt items on the invoice; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

- (a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or
- (b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of

business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;
2. of a change of character of the business, or
3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;
2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;
3. the person fails to renew its annual business license with the Department of Commerce; or
4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

(1)(a) Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

(b) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

(3) If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b)(i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to

Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or
2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in

connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

- (a) the application being performed;
- (b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output

procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for

purposes of Subsections 59-12-104(13) and (17).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1) Fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax pursuant to Subsection 59-12-104(1) if the fuel charges are:

- (a) optional; and
- (b) separately stated on the invoice.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

- (a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and
- (b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1)(a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

- (b) This applies whether the charge made for the use of the

seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

(2) "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes,

and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:
 (i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

(1) Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

(2) Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

(3) Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Purchases by the State of Utah, Its Institutions, and Its Political Subdivisions Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-104.6.

(1) "Lodging related purchase" is as defined in Section 59-12-104.6.

(2) A purchase made by the state, its institutions, or its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts is exempt from tax if the purchase is for use in the exercise of an essential governmental function.

(3) A purchase is considered made by the state, its institutions, or its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with the employee's own funds and is reimbursed by the state or local entity, that purchase is not made by the state or local entity and does not qualify for the exemption.

(4) An entity that qualifies under Subsections (2) and (3) for an exemption from sales and sales-related tax on a lodging related purchase:

(a) may not receive that exemption at the point of sale; and

(b) may apply for a refund of tax paid on forms provided by the commission.

(5) An entity that applies for a refund of sales and sales-related tax paid under Subsection (4)(b) shall:

(a) retain a copy of a receipt or invoice indicating:

(i) the amount of sales and sales-related tax paid for each purchase for which a refund of tax paid is claimed; and

(ii) the purchase was paid for directly by the entity; and

(b) maintain original records supporting the refund request for three years following the date of the refund and provide those records to the commission upon request.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control

purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other

items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of

meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:
 - a) between an institution of higher education and a student;
 - b) available only to a student;
 - c) whose duration is the entire term, semester, or similar unit of study;
 - d) paid in advance of the term, semester, or similar unit of study; and
 - e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:
 - a) in the case of a religious or charitable institution:
 - (1) employees of the institution;
 - (2) volunteers of the institution;
 - (3) guests of the institution; and
 - (4) other individuals that constitute a limited class of people; or
 - b) in the case of an institution of higher education:
 - (1) students of the institution;
 - (2) employees of the institution;
 - (3) guests of the institution; and
 - (4) other individuals that constitute a limited class of people; and
2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;
2. must not, when its successive issues are put together, constitute a book;
3. must be intended for circulation among the general public; and
4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-

19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two \$6 meals, but the value of the free meal is limited to \$5, the \$12 is rung up and the \$5 deducted, resulting in a taxable sale of \$7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for \$8,500 and a credit of \$6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or \$2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and

administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed \$1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers

Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.

(2)(a) Service plan charges for a future taxable repair are subject to sales tax.

(b) Sales tax must also be collected on any deductible charged to a customer for the customer's share of the repair done under the service plan.

(3)(a) Service plan charges for items of tangible personal property that are converted to real property are not taxable.

(b) Service plan charges for items of tangible personal property that are permanently attached to real property are treated as follows:

(i) service plan charges for labor are not taxable; and

(ii) service plan charges for parts are taxable unless those parts are exempt under Title 59, Chapter 12, Part 1, Tax Collection.

(4) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and

items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from

any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and

ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a \$50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the \$50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a \$50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.

(1) Taxable telecommunications service charges include subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special telecommunications services for the deaf, and special telecommunications service for low income subscribers.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as

defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;
2. The person identifies himself as a purchasing agent for the government entity;
3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;
4. The transaction is approved by the government entity; and
5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-211.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

(4)(a) The provisions for determining the location of a transaction under Subsection (4)(b) apply if:

- (i) a purchaser uses computer software;
- (ii) there is not a transfer of a copy of the computer software to the purchaser; and
- (iii) the purchaser uses the computer software at more than one location.

(b) The location of a transaction described in Subsection (4)(a) is:

- (i) if the seller is required to collect and remit tax to the commission for the purchase, and the purchaser provides the seller at the time of purchase a reasonable and consistent method for allocating the purchase to multiple locations, the location determined by applying that reasonable and consistent method of allocation; or
- (ii) if the seller is required to collect and remit tax to the commission for the purchase, and the seller does not receive information described in Subsection (4)(b)(i) from the purchaser at the time of the purchase, the location determined in accordance with Subsections 59-12-211(4) and (5); or
- (iii) if the purchaser accrues and remits sales tax to the commission for the purchase, the location determined:

(A) by applying a reasonable and consistent method of allocation; or

(B) in accordance with Subsections 59-12-211(4) and (5).

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Service Charges, Tips, Gratuities, Cover Charges, and Other Similar Charges Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on service charges, tips, gratuities, cover charges, or other similar charges included on a patron's bill that are required to be paid.

(b) Voluntary amounts left on the table or added to a credit card charge slip are not subject to sales tax.

(2) A service charge, tip, gratuity, cover charge, or other similar charge that a restaurant, cafe, club, private club, or similar business includes on a patron's bill is presumed to be required unless:

(a) language on the front of the bill states that the service charge, tip, gratuity, cover charge, or other similar charge is voluntary and may be increased or decreased by the patron; and

(b) the language described in Subsection (2)(a) is in the same font size as the service charge, tip, gratuity, cover charge, or other similar charge that the restaurant, cafe, club, private club, or similar business included on the bill.

(3) Charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah

Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

- (a) inspected in this state; or
- (b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax

on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

(1) Definitions.

(a) "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

(b) "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

(2) Except as provided in Subsection (3), the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

(3) If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

(4) The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

(5) An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

(6) A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

(7) A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the commission:

(a) on forms provided by the commission, and

(b) at the time and in the manner sales and use tax is remitted to the commission.

(8) A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

(a) the name and address of the user of the taxable energy;

(b) the volume of taxable energy delivered to the user; and

(c) the entity from which the taxable energy was purchased.

(9) The information required under Subsection (8) shall be provided to the commission:

(a) for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value; and

(b)(i) except as provided in Subsection (9)(b)(ii), at the time the person delivering the taxable energy files sales and use tax returns with the commission; or

(ii) if the person delivering the taxable energy files an annual information return under Subsection 10-1-307(5), at the time that annual information return is filed with the commission.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The \$75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

- (a) medical services;
- (b) boarding services; or
- (c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements

are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) Graphic design services are not subject to sales and use tax:

(a) if the graphic design is the object of the transaction; and

(b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

(a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

(b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (2) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(3) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

- A. "Clothing" includes:
1. aprons for use in a household or shop;
 2. athletic supporters;
 3. baby receiving blankets;
 4. bathing suits and caps;
 5. beach capes and coats;
 6. belts and suspenders;
 7. boots;
 8. coats and jackets;
 9. costumes;
 10. diapers, including disposable diapers, for children and adults;
 11. ear muffs;
 12. footlets;
 13. formal wear;
 14. garters and garter belts;
 15. girdles;
 16. gloves and mittens for general use;
 17. hats and caps;
 18. hosiery;

19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:

1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:
 - a) knitting needles;
 - b) patterns;
 - c) pins;
 - d) scissors;
 - e) sewing machines;
 - f) sewing needles;
 - g) tape measures; and
 - h) thimbles; and
 5. sewing materials that become part of clothing,

including:

- a) buttons;
- b) fabric;
- c) lace;
- d) thread;
- e) yarn; and
- f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:

- A. breathing masks;
- B. clean room apparel and equipment;
- C. ear and hearing protectors;
- D. face shields;
- E. hard hats;
- F. helmets;
- G. paint or dust respirators;
- H. protective gloves;
- I. safety glasses and goggles;
- J. safety belts;
- K. tool belts; and
- L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:

- A. ballet and tap shoes;
- B. cleated or spiked athletic shoes;
- C. gloves, including:
 - (i) baseball gloves;
 - (ii) bowling gloves;
 - (iii) boxing gloves;
 - (iv) hockey gloves; and
 - (v) golf gloves;
- D. goggles;
- E. hand and elbow guards;
- F. life preservers and vests;

- G. mouth guards;
- H. roller skates and ice skates;
- I. shin guards;
- J. shoulder pads;
- K. ski boots;
- L. waders; and
- M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

- A. The computation of sales and use tax must be:
 1. carried to the third place; and
 2. rounded to a whole cent pursuant to B.
- B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.
- C. Sellers may compute the tax due on a transaction on an:
 1. item basis; or
 2. invoice basis.
- D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

1. monthly; and
2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and
2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that

property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

- (a) land;
- (b) buildings;
- (c) raw materials;
- (d) supplies;
- (e) film;
- (f) services;
- (g) transportation;
- (h) gas, electricity, and other fuels;
- (i) admissions or user fees; and
- (j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

- (a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and
- (b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(c) "New or expanding establishment" means:

(i)(A) the creation of a new web search portal establishment in this state; or

(B) the expansion of an existing Utah web search portal establishment if the expanded establishment increases services or is substantially different in nature, character, or purpose from the existing Utah web search portal establishment.

(ii) The operator of a web search portal establishment who closes operations at one location in this state and reopens the same establishment at a new location does not qualify as a new or expanding establishment without demonstrating that the move meets the conditions set forth in Subsection (1)(c)(i).

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

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	10-1-306
	10-1-307
	10-1-405
	19-6-808
26-32a-101 through 26-32a-113	59-1-210
	59-12
	59-12-102
	59-12-103
	59-12-104
	59-12-105
	59-12-106
	59-12-107
	59-12-108
	59-12-118
	59-12-301
	59-12-352
	59-12-353

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(4)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

- (a) the property owner's name;
- (b) the address of the property; and
- (c) the serial number of the property.

(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of

the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

- (i) Course 101 - Basic Appraisal Principles;
- (ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);
- (iii) Course 501 - Assessment Practice in Utah;
- (iv) Course 502 - Mass Appraisal of Land;
- (v) Course 503 - Development and Use of Personal Property Schedules;
- (vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and
- (vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 502;
- (ii) successfully complete a comprehensive residential field practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501, 502, and 505;
- (ii) successfully complete a comprehensive field practicum including residential and commercial properties; and
- (iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 101, 103, 501, and 503; and
- (ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 504;
- (ii) successfully complete a comprehensive valuation practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be

borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or

educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;
b) acquisition of personal property; or
c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of

January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value

based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) 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 adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b). (c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms

provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

- (a) a description of the leased or rented equipment;
- (b) the year of manufacture and acquisition cost;
- (c) a listing, by month, of the counties where the equipment has situs; and
- (d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2019 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;
- (c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and
- (d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.

(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
18	72%
17	42%

16 and prior 11%

(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
18	91%
17	81%
16	70%
15	59%
14	48%
13	38%
12	25%
11 and prior	13%

(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
18	86%
17	70%
16	53%
15	35%
14 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;
- (J) signs, mechanical and electrical; and
- (K) LED component of a billboard.

(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
18	92%
17	84%
16	74%
15	64%
14	55%
13	45%
12	34%
11	23%
10 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 2019 percent good applies to 2019 models purchased in 2018.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
19	90%
18	71%
17	66%
16	61%
15	56%
14	51%
13	45%
12	40%
11	35%
10	30%
09	20%
08	15%
07	10%
06 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

Examples of machinery and equipment 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) Medical and dental equipment is subject to a high degree of technological development by the health industry.

Examples of medical and dental equipment include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv)(A) Notwithstanding Subsection (6)(g)(iii), 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)(iv)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(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)(iv)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
18	94%
17	87%
16	79%
15	71%
14	64%
13	56%
12	47%
11	38%
10	30%
09	21%
08 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
18	96%
17	91%
16	84%
15	78%
14	73%
13	68%
12	60%
11	54%
10	48%
09	42%
08	35%
07	28%
06	20%
05 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
18	62%
17	46%
16	21%
15	9%
14 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) 2019 model equipment purchased in 2018 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
18	49%
17	47%
16	44%
15	42%
14	39%
13	37%
12	35%
11	32%
10	30%
09	28%
08	25%

07	23%
06	20%
05 and prior	13%

(m) Class 14 - Motor Homes.

(i) Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(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
18	47%
17	34%
16	24%
15	15%
14 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) billboard (excluding LED component);
- (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
18	96%
17	94%
16	89%
15	85%
14	82%
13	79%
12	73%
11	69%
10	64%
09	63%
08	59%
07	57%
06	51%
05	45%
04	38%
03	30%

02	23%
01	15%
00 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

- (i) Examples of property in this class include:
 - (A) houseboats equal to or greater than 31 feet in length;
 - (B) sailboats equal to or greater than 31 feet in length; and
 - (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
 - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
 - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
 - (aa) the manufacturer's suggested retail price for comparable property; or
 - (bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2019 percent good applies to 2019 models purchased in 2018.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
19	90%
18	67%
17	64%
16	62%
15	60%
14	57%
13	55%
12	53%
11	50%
10	48%
09	46%
08	43%
07	41%
06	39%
05	36%
04	34%
03	32%
02	29%
01	27%
00	25%
99	21%
98 and prior	17%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent

good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
18	95%
17	87%
16	81%
15	74%
14	67%
13	61%
12	55%
11	46%
10	40%
09	34%
08	27%
07	19%
06 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 2019 percent good applies to 2019 models purchased in 2018.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
19	95%
18	85%
17	82%
16	78%
15	74%
14	69%
13	65%
12	61%
11	57%
10	53%
09	50%
08	46%
07	41%
06	36%
05	30%

04	25%
03 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
18	94%
17	88%
16	82%
15	77%
14	71%
13	65%
12	59%
11	54%
10	48%
09	42%
08	36%
07 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
18	86%
17	70%
16	53%
15	36%
14	19%
13 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
18	97%
17	95%
16	92%
15	90%
14	87%
13	84%
12	82%
11	79%
10	77%
09	74%
08	71%
07	69%
06	66%
05	64%
04	61%
03	58%
02	56%
01	53%
00	51%
99	48%
98	45%
97	43%
96	40%
95	38%
94	35%
93	32%
92	30%
91	27%
90	25%
89	22%
88	19%
87	17%
86	14%
85	12%
84 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
18	75%
17	50%
16	25%
15 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2019.

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. 2018 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1) Box Elder	758
2) Cache	654
3) Carbon	501
4) Davis	804
5) Emery	476
6) Iron	759
7) Kane	398
8) Millard	753
9) Salt Lake	680
10) Utah	715
11) Washington	620
12) Weber	769

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1) Box Elder	666
2) Cache	558
3) Carbon	399
4) Davis	708
5) Duchesne	465
6) Emery	383
7) Grand	367
8) Iron	665
9) Juab	424
10) Kane	306
11) Millard	661
12) Salt Lake	584
13) Sanpete	511
14) Sevier	538
15) Summit	438
16) Tooele	426
17) Utah	618
18) Wasatch	463
19) Washington	528
20) Weber	674

(iii) Irrigated III. The following counties shall assess

Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1) Beaver	532
2) Box Elder	524
3) Cache	423
4) Carbon	265
5) Davis	569
6) Duchesne	326
7) Emery	241
8) Garfield	201
9) Grand	232
10) Iron	528
11) Juab	285
12) Kane	169
13) Millard	523
14) Morgan	366
15) Piute	317
16) Rich	169
17) Salt Lake	445
18) San Juan	163
19) Sanpete	375
20) Sevier	400
21) Summit	299
22) Tooele	285
23) Uintah	353
24) Utah	474
25) Wasatch	322
26) Washington	388
27) Wayne	313
28) Weber	536

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	438
2) Box Elder	433
3) Cache	328
4) Carbon	170
5) Daggett	180
6) Davis	475
7) Duchesne	229
8) Emery	149
9) Garfield	108
10) Grand	140
11) Iron	432
12) Juab	189
13) Kane	76
14) Millard	425
15) Morgan	271
16) Piute	222
17) Rich	78
18) Salt Lake	344
19) San Juan	74
20) Sanpete	282
21) Sevier	307
22) Summit	206
23) Tooele	194
24) Uintah	261
25) Utah	381
26) Wasatch	229
27) Washington	292
28) Wayne	220
29) Weber	438

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	620
2) Box Elder	671
3) Cache	620
4) Carbon	620
5) Davis	676
6) Duchesne	620
7) Emery	620
8) Garfield	620
9) Grand	620

10)	Iron	620
11)	Juab	620
12)	Kane	620
13)	Millard	620
14)	Morgan	620
15)	Piute	620
16)	Salt Lake	620
17)	San Juan	620
18)	Sanpete	620
19)	Sevier	620
20)	Summit	620
21)	Tooele	620
22)	Uintah	620
23)	Utah	681
24)	Wasatch	620
25)	Washington	733
26)	Wayne	620
27)	Weber	676

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	225
2)	Box Elder	242
3)	Cache	251
4)	Carbon	125
5)	Daggett	149
6)	Davis	253
7)	Duchesne	159
8)	Emery	132
9)	Garfield	99
10)	Grand	127
11)	Iron	250
12)	Juab	145
13)	Kane	104
14)	Millard	185
15)	Morgan	187
16)	Piute	181
17)	Rich	100
18)	Salt Lake	218
19)	Sanpete	185
20)	Sevier	191
21)	Summit	193
22)	Tooele	177
23)	Uintah	198
24)	Utah	239
25)	Wasatch	199
26)	Washington	217
27)	Wayne	164
28)	Weber	287

(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	49
2)	Box Elder	88
3)	Cache	112
4)	Carbon	47
5)	Davis	49
6)	Duchesne	52
7)	Garfield	46
8)	Grand	47
9)	Iron	47
10)	Juab	49
11)	Kane	46
12)	Millard	45
13)	Morgan	61
14)	Rich	46
15)	Salt Lake	52
16)	San Juan	50
17)	Sanpete	52
18)	Summit	46
19)	Tooele	50
20)	Uintah	52
21)	Utah	48
22)	Wasatch	46
23)	Washington	46
24)	Weber	75

(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	14
2)	Box Elder	56
3)	Cache	79
4)	Carbon	14
5)	Davis	15
6)	Duchesne	18
7)	Garfield	14
8)	Grand	14
9)	Iron	14
10)	Juab	15
11)	Kane	14
12)	Millard	13
13)	Morgan	26
14)	Rich	14
15)	Salt Lake	15
16)	San Juan	16
17)	Sanpete	18
18)	Summit	14
19)	Tooele	14
20)	Uintah	18
21)	Utah	15
22)	Wasatch	14
23)	Washington	13
24)	Weber	42

(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	67
2)	Box Elder	71
3)	Cache	67
4)	Carbon	50
5)	Daggett	50
6)	Davis	58
7)	Duchesne	66
8)	Emery	68
9)	Garfield	73
10)	Grand	74
11)	Iron	71
12)	Juab	62
13)	Kane	72
14)	Millard	73
15)	Morgan	64
16)	Piute	86
17)	Rich	62
18)	Salt Lake	67
19)	San Juan	71
20)	Sanpete	60
21)	Sevier	62
22)	Summit	69
23)	Tooele	68
24)	Uintah	77
25)	Utah	63
26)	Wasatch	50
27)	Washington	62
28)	Wayne	84
29)	Weber	67

(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	21
2)	Box Elder	22
3)	Cache	21
4)	Carbon	14
5)	Daggett	13
6)	Davis	18
7)	Duchesne	18
8)	Emery	20
9)	Garfield	22
10)	Grand	21

11)	Iron	21
12)	Juab	18
13)	Kane	23
14)	Millard	23
15)	Morgan	20
16)	Piute	25
17)	Rich	19
18)	Salt Lake	20
19)	San Juan	23
20)	Sanpete	17
21)	Sevier	17
22)	Summit	19
23)	Tooele	19
24)	Uintah	27
25)	Utah	22
26)	Wasatch	16
27)	Washington	20
28)	Wayne	27
29)	Weber	19

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	15
2)	Box Elder	16
3)	Cache	14
4)	Carbon	12
5)	Daggett	11
6)	Davis	12
7)	Duchesne	13
8)	Emery	13
9)	Garfield	15
10)	Grand	14
11)	Iron	14
12)	Juab	13
13)	Kane	14
14)	Millard	15
15)	Morgan	12
16)	Piute	17
17)	Rich	12
18)	Salt Lake	14
19)	San Juan	16
20)	Sanpete	13
21)	Sevier	13
22)	Summit	13
23)	Tooele	13
24)	Uintah	18
25)	Utah	13
26)	Wasatch	12
27)	Washington	12
28)	Wayne	17
29)	Weber	13

(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	5
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	5
9)	Garfield	5
10)	Grand	5
11)	Iron	5
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	5
16)	Piute	5
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	5
25)	Utah	5
26)	Wasatch	5

27)	Washington	5
28)	Wayne	5
29)	Weber	5

(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. share-down of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and

Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the

Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 -

Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are

not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a)

through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without

undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;
 (II) economic conditions; or
 (III) similar circumstances.
 (C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under

Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

- (I) failure to file a return; or
- (II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

- a) procedures the contracting party will follow to minimize the time a customer waits in line; and
- b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

- a) brought back into the state; or
- b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and
2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who

qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a

decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

- (i) the name and address of the property owner;
- (ii) the identification number, location, and description of the property;
- (iii) the value placed on the property by the assessor;
- (iv) the basis for appeal stated in the taxpayer's appeal;
- (v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and
- (vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

- (i) the name and address of the property owner;
- (ii) the identification number of the property;
- (iii) the date the notice was sent;
- (iv) a notice of appeal rights to the commission; and
- (v) a statement of the decision of the county board of equalization; or
- (vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

- (i) the Utah Housing Corporation project identification number;
- (ii) the project name;
- (iii) the project address;
- (iv) the city in which the project is located;
- (v) the county in which the project is located;
- (vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;
- (vii) the building address for each building included in the project;
- (viii) the total apartment units included in the project;
- (ix) the total apartment units in the project that are eligible for low-income housing tax credits;
- (x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(2)(b);

- (xi) whether the project is:
 - (A) the rehabilitation of an existing building; or
 - (B) new construction;
- (xii) the date on which the project was placed in service;
- (xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

- (xvi) for each apartment unit included in the project:
 - (A) the number of bedrooms in the apartment unit;
 - (B) the size of the apartment unit in square feet; and
 - (C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

- (a) Total aggregate fair market value is determined by

aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

- (i) class;
- (ii) property type;
- (iii) geographic location; and
- (iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals November 13, 2018

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