R13. Administrative Services, Administration.
R13-2. Management of Records and Access to Records.
R13-2-1. Authority and Purpose.

Under authority of Section 63A-12-104 and 63G-2-204(2)(d), this rule specifies how permanent and historical records in the custody of the Division of Archives and Records Service may be accessed, at what level the requirements of Title 63A, Chapter 12 are undertaken, and where and to whom requests for access to records shall be directed.

R13-2-2. Definitions.

Terms used in this rule are defined in Section 63G-2-103. Additional terms are defined as follows:

(1) "Department" means the Department of Administrative Services created by Section 63A-1-104.

(2) "Division" means a division of the Department of Administrative Services listed in Section 63A-1-109.

R13-2-3. Public Records Management Duties.

The department shall undertake the duties specified in Section 63A-12-103 at the division level, and at the department level by the executive director's office for areas not otherwise under the function of a division.

R13-2-4. Requests for Access.

(1) Except as provided by Section R13-2-8 regarding access to permanent or historical records in the custody of the Division of Archives and Records Service, a request for access to records shall be made in writing, include the information required by Section 63G-2-204, and be directed to the records officer of the division which the requester believes possesses the records.

(2) Requests may be submitted to:

(a) Administrative Services, including the Executive Director's Office, and the Office of Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.

(b) Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007.

(c) Archives and Records Service, 346 S. Rio Grande Street, Salt Lake City, UT 84101-1106.

(d) Facilities Construction and Management, 4110 State Office Building, Salt Lake City, UT 84114.

(e) Finance, including the Office of State Debt Collection, and Consolidated Budget and Accounting, 2110 State Office Building, Salt Lake City, UT 84114.

(f) Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.

(g) Purchasing and General Services, including the Surplus Property Program, 3150 State Office Building, Salt Lake City, UT 84114.

(h) Risk Management, 5120 State Office Building, Salt Lake City, UT 84114.

R13-2-5. Appeal of a Fee Waiver Denial, Access Determination Decision, or Extraordinary Circumstances Claims or Dates.

To appeal the decision of a records officer, a requester shall submit a written notice of appeal providing information required by Subsection 63G-2-401(2) to the department's designated chief administrative officer for GRAMA appeals: DAS GRAMA Appeals Officer, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007.

R13-2-6. Fees.

(1) A schedule of fees that may be charged in response to a records request may be obtained by contacting the records officer. The fee schedule is also available in the annual appropriations bill and posted on the department's website at http://www.das.utah.gov/.

(2) Fees for providing a record may be waived under certain circumstances described in Subsection 63G-2-203(4). A request for a fee waiver shall be made in writing to the records officer as part of the records request.

R13-2-7. Forms.

(1) Request and appeal forms are available at http://archives.utah.gov/recordsmanagement/forms/forms-grama.html, or from the records officer.

(2) These forms are provided as a convenience, and a requester is not required to use these forms as long as information required by the statute is provided.

R13-2-8. Access to Permanent or Historical Records in the Custody of the Division of Archives and Records Service.

(1) An individual need not submit a formal records request to inspect public records of permanent or historical value stored at the state archives.

(2) An individual may request access to records that are noncurrent records of permanent or historical value in the custody of the state archives. The individual shall direct that request to the state archives' research center, 346 S Rio Grande, Salt Lake City, UT 84101-1106.

(3) If the requester is dissatisfied with the initial decision rendered by the research center, or if the state archives' research center denies access to these records, the requester may appeal the decision to the state archivist under the procedures of Section 63G-2-401 et seq.

KEY: public information, access to information, GRAMA requests, GRAMA appeals

July 22, 2014	**63G-2-204(2)(d)**
Notice of Continuation May 29, 2019	**63A-12-104**

R156. Commerce, Occupational and Professional Licensing.
R156-63a. Security Personnel Licensing Act Contract Security Rule.
R156-63a-101. Title.

This rule is known as the "Security Personnel Licensing Act Contract Security Rule."

R156-63a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means a basic education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63a-602; and

(b) has the content required by Section R156-63a-603.

(2) "Approved basic firearms training program" means a firearms education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63a-602; and

(b) has the content required by Section R156-63a-604.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(4) "Contract security company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom the peace officer is employed.

(5) "Contract security company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well-being of personnel employed by, or animals owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(viii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Corporate officer" as defined in Subsection 58-63-102(9), includes an individual who is on file with the Division of Corporations and Commercial Code as a limited liability company's company officer or "governing person" as defined in Subsection 48-3a-102(7), or as a limited partnership's "general partner" as defined in Subsection 48-2e-102(8).

(9) "Employee" means an individual providing services in the security guard industry for compensation, when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(10) "Instructor" means a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, who has fulfilled the instructor experience and training requirements set forth in Section R156-63a-602.

(11) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63a-304.

(12) "Qualifying agent" means a natural person who meets all of the requirements set forth in Subsection 58-63-302(1)(c).

(13) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(14) "Supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(15) "Trainer" has the same meaning as "instructor".

(16) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-63a-502.

R156-63a-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 63.

R156-63a-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.

R156-63a-201. Advisory Peer Committee created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Security Services Licensing Board, consisting of:

(a) one member who is a corporate officer, director, manager or trainer of a contract security company;

(b) one member who is a corporate officer, director, manager or trainer of an armored car company;

(c) one member who is an armored car security officer or a contract security officer;

(d) one member representing the general public; and

(e) one member who is a trainer, and who is also, in order of preference:

(i) a member of the Utah Peace Officers Association;

(ii) a qualifying agent of a licensed security company that is in good standing with the Division; or

(iii) a member of a security association that is in good standing wit the Utah Division of Corporations.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities regarding the acceptability of educational programs, requesting approvals from the Division, and periodically reviewing all approved basic education and training programs and approved basic firearms training programs regarding current curriculum requirements.

(3) The Education Advisory Committee shall consider, when advising the Board of the acceptability of an education and training program:

(a) whether in keeping with Subsections R156-63a-102(1) and (2), or Subsections R156-63b-102(1) and (2), a proposed basic education and training program meets:

(i) the operating standards of Sections R156-63a-602 or R156-63b-602; and

(ii) the content requirements of Sections R156-63a-603 or R156-63b-603; and

(b) whether a proposed basic firearms training program

meets:

(i) the operating standards of Sections R156-63a-602 or R156-63b-602; and

(ii) the content requirements of Sections R156-63a-604 or R156-63b-604.

R156-63a-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) two fingerprint cards for each of the applicant's:

(i) qualifying agent;

(ii) corporate officers;

(iii) directors;

(iv) equity holders or shareholders owning more than 5% of the equity or outstanding shares;

(v) partners;

(vi) proprietors; and

(vii) responsible management personnel; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each of the persons required to provide a fingerprint card under Subsection (1)(a) above.

(2) An application for licensure as an armed or unarmed private security officer shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records for the applicant with:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

(3) Applications for change in licensure classification from unarmed to armed private security officer shall only require the following additional documentation:

(a) successful completion of an approved basic firearms training program; and

(b) an additional criminal history background check pursuant to Section 58-63-302 and Subsection R156-63a-302a(2).

R156-63a-302b. Qualifications for Licensure - Basic Education and Training Requirements.

(1) In accordance with Subsections 58-1-203(1)(b), 58-63-302(2)(g), and 58-63-302(2)(h), an applicant for licensure as an armed private security officer shall successfully complete:

(a) an approved basic education and training program, as defined in Subsection R156-63a-102(1); and

(b) an approved basic firearms training program, as defined in Subsection R156-63a-102(2).

(2) In accordance with Subsections 58-1-203(1)(b) and 58-63-302(3)(f), an applicant for licensure as an unarmed private security officer shall successfully complete an approved basic education and training program, as defined in Subsection R156-63a-102(1).

R156-63a-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Contract Security Company Qualifying Agent Examination.

(2) An applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 80% on the approved basic education and training program's final examination.

R156-63a-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) false arrest;

(e) libel and slander;

(f) invasion of privacy;

(g) broad form property damage;

(h) damage to property in the care, custody or control of the contract security company; and

(i) errors and omissions.

(2) The required insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All contract security companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63a-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

In accordance with Subsections 76-10-509(1) and 76-10-509.4, an armed private security officer must be 18 years of age or older at the time of submitting an application for licensure.

R156-63a-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In accordance with Subsections 58-63-302(1)(h), (2)(c), and (3)(c), in addition to those criminal convictions prohibiting licensure, the following criminal convictions may disqualify an applicant or licensee from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;

(b) theft, including retail theft, as defined in Title 76;

(c) larceny;

(d) sex offenses as defined in Title 76, Chapter 5, Part 4;

(e) any offense involving a controlled substance as defined in Subsection 58-37-2(1)(f);

(f) fraud;

(g) extortion;

(h) treason;

(i) forgery;

(j) arson;

(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography;
(u) two or more convictions for driving under the influence of alcohol within the last three years; and
(v) any attempt to commit any of the above offenses.

(2) An applicant may not obtain initial licensure or license renewal as an armed private security officer or as a contract security company providing armed private security services, and the license of an armed private security officer or of a contract security company providing armed private security services shall be automatically revoked, if the applicant or licensee is in violation of any provision set forth in:

(a) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(b) Utah Code Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) In accordance with Subsection 58-63-302(1), if the applicant or licensee is a contract security company, the background of the following individuals shall be considered:
(a) corporate officer;
(b) director;
(c) any shareholder owning 5% or more of the outstanding stock of the company as described in Subsection 58-63-302(1)(d)(ii);
(d) partner;
(e) proprietor;
(f) qualifying agent; and
(g) management personnel employed within Utah or having direct responsibility for managing operations of the company within Utah.

(4) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis in accordance with Section R156-1-302.

R156-63a-302g. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Section 58-63-310, upon receipt of a complete application for licensure as an unarmed private security officer or as an armed private security officer, the Division may immediately issue an interim permit to the applicant, if the applicant:

(1)(a) submits with the applicant's application an official criminal history report from the Bureau of Criminal Identification, Utah Department of Public Safety, showing "No Criminal Record Found";

(b) has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) has not had a license to practice an occupation or profession denied, revoked, suspended, restricted, or placed on probation.

(2) If an applicant's application is denied, an interim permit issued under this section shall automatically expire.

R156-63a-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 63 is established by rule in Section R156-1-308a.

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

R156-63a-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the following continuing education requirements are established as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer:

(1) Armed and unarmed private security officers shall complete at least 32 hours of continuing education during each two-year renewal cycle. A minimum of 16 hours shall be core continuing education; the remaining hours may consist of professional continuing education or core continuing education.

(a) "Core continuing education" is defined as education completed during a two-year renewal cycle, that covers each of the following topics:
(i) company operational procedures manual;
(ii) applicable state laws and rules;
(iii) legal powers and limitations of private security officers;
(iv) observation and reporting techniques;
(v) ethics;
(vi) management of aggressive behavior, use of force, de-escalation techniques;
(vii) emergency techniques; and
(viii) a recognized basic life saving course to obtain or maintain certification in:
(A) cardiopulmonary resuscitation (CPR);
(B) automated external defibrillator (AED);
(C) first aid; or
(D) any other recognized basic life-saving skills.

(b) "Professional continuing education" is defined as education covering one or more of the following topics:
(i) executive protection;
(ii) basic self-defense;
(iii) driving techniques for the security professional;
(iv) escort techniques;
(v) crowd control;
(vi) access control and the use of electronic detection devices;
(vii) use of defensive items and objects;
(viii) homeland security involving bomb threats and anti-terrorism;
(ix) Americans with Disabilities Act (ADA) compliance; or
(x) any other topic relevant to the education of security professionals.

(2) In addition to the 32 hours of core/professional continuing education, an armed private security officer shall complete at least 16 hours of continuing firearms education and training during each two-year renewal cycle. Continuing firearms education and training:

(a) shall be completed in four-hour blocks every six months;

(b) may not include any hours for the continuing education requirement in Subsection R156-63a-304(1); and

(c) shall include at minimum:
(i) live classroom instruction concerning:
(A) the restrictions in the use of deadly force; and
(B) firearms safety on duty, at home, and on the range; and
(ii) a recognized practical pistol recertification course

on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(3) Credit for continuing education shall be recognized as follows:

(a) unlimited hours for core, professional, and firearm continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) unlimited hours for professional continuing education provided via the Internet, if the course provider verifies registration and participation in the course by means of an exam which demonstrates that the participant has learned the material presented;

(c) two hours for each hour of lecturing, training, or instructing a course, if it is the first time the material has been taught during the preceding 12 months, up to a maximum of 12 hours during each two-year renewal period; the type of credit received - whether core, professional, or firearms education and training - shall be based on the subject taught; and

(d) one professional continuing education hour for each hour of service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee, up to a maximum of six hours during each two-year renewal period.

(4) Modification of Required Continuing Education Hours.

(a) A licensee who fails to complete the required four hours of continuing firearms education and training within the appropriate six-month period shall complete one and one half times the number of hours the licensee was deficient for the reporting period ("penalty hours"). Penalty hours shall not satisfy in whole or in part any of the continuing firearms education and training hours required for subsequent renewal of the license.

(b) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased proportionately.

(c) The Division may defer or waive continuing education requirements as provided in Section R156-1-308d.

(5) A licensee shall maintain documentation showing compliance with the requirements of this section, such as certificates of completion or course handouts and materials, for a period of three years from the end of the renewal period for which the continuing education is due.

(6) A contract security company licensed under this chapter shall:

(a) review continuing education courses and approve for its employees only those courses that meet the requirements of this section;

(b)(i) maintain accurate records of its approved continuing education courses and of each employee's attendance and course completion; and

(ii) make such records available for audit by representatives of the Division; and

(c) ensure that each provider of its approved continuing education courses:

(i) maintains accurate records of attendance and course completion, by individual licensee, that are available for review by the licensed company, the Division, and the licensee; and

(ii) provides individuals completing the course a certificate identifying the:

(A) name of the individual;

(B) date the course was taken;

(C) location where the course was taken or type of Internet course taken;

(D) title of the course identifying its topic(s) as outlined in Subsection R156-63a-304(1);

(E) name of the continuing education provider and instructor;

(F) exam score for any exam taken; and

(G) number of continuing education hours completed.

(7) On a random basis, the Division may assign monitors at no charge to attend a continuing education course for the purpose of evaluating the course and the instructor.

(8) The initial licensure education and training programs defined in Subsections R156-63a-102(1) and (2) may not be used to satisfy, in whole or in part, any of the continuing education requirements of this section.

R156-63a-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63a-302f to determine appropriate licensure action.

R156-63a-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63a-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an unarmed private security officer, an armed private security officer, or a contract security company, so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;

(8) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613;

(9) pursuant to Subsection R156-63a-613(1), failing as

a contract security company or an armed or unarmed private security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(h), (2)(c), or (3)(c);

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company;

(11) failing as an armed or unarmed private security officer to complete required continuing education hours, in violation of Section R156-63a-304; and

(12) failing as a contract security company to comply with Subsection R156-63a-304(6) regarding continuing education courses or providers.

R156-63a-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of a contract security company or an armed private security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(h), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Contract Security Company	Armed or Unarmed Security Officer
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(3) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

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

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

(6) 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.

R156-63a-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which the officer has passed an approved basic firearms training program.

(2) Shotguns and rifles owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer, if the officer has successfully completed an approved basic firearms training program in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63a-602. Division Approval and Operating Standards - Training Programs for Armed and Unarmed Private Security Officers.

(1) To obtain Division approval of any training program for armed private security officers and unarmed private security officers, the program owner shall submit to the Division:

(a) an application in a form prescribed by the Division;

(b) a fee for the approval of the program; and

(c) a written education and training manual which includes:

(i) a course syllabus with an hourly breakdown of the course outline and training schedule;

(ii) a course curriculum;

(iii) a four-hour instructor training program;

(iv) testing tools; and

(v) if an online curriculum or multi-media learning tools are used, a copy of the original medium.

(2) If any individual or entity uses an approved basic education and training program that the user does not own, the user shall submit to and maintain with the Division a current copy of the user's written contract with the program owner, which identifies the duration allowed for use. The user shall promptly update this information in writing with the Division as necessary.

(3) A course curriculum for armed private security officers shall include the content established in Sections R156-63a-603 and R156-63a-604.

(4) A course curriculum for unarmed private security officers shall include the content established in Section R156-63a-603.

(5) All instructors teaching an approved basic education and training program shall:

(a) have at least three years of supervisory experience reasonably related to providing contract security services; and

(b) have completed a four-hour instructor training program which shall include the following:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(6) All instructors teaching an approved basic firearms training program shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructor certification; or

(b) current certification as a firearms instructor by:

(i) the National Rifle Association;

(ii) a Utah law enforcement agency;

(iii) a Federal law enforcement agency;

(iv) a branch of the United States military; or

(v) other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) When an instructor for a Division-approved training program begins providing instruction, the user of the Division-approved training program shall report the

instructor's name to the Division, on a form supplied by the Division.

(8) When an instructor for a Division-approved training program ceases to instruct for that program, or no longer meets instructor requirements, the user of the Division-approved training program shall report that information and the instructor's name to the Division, on a form supplied by the Division.

(9) All approved training programs shall maintain training records on each individual trained, including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the program's files for at least three years.

(10) If an approved training program provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

R156-63a-603. Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

In accordance with Subsection 58-63-302(2)(g), an approved basic education and training program for armed and unarmed private security officers shall have at least eight hours of classroom or online instruction, including:

(1) the nature and role of private security, including a private security officer's:

(a) scope and limits of authority;

(b) civil liability; and

(c) role in today's society;

(2) state laws and rules applicable to private security;

(3) the legal responsibilities of private security, including:

(a) constitutional law;

(b) search and seizure; and

(c) other such topics;

(4) situational response evaluations, including:

(a) protecting and securing crime or accident scenes;

(b) notifying internal and external agencies; and

(c) controlling information;

(5) security ethics;

(6) the use of force, emphasizing the de-escalation of force and alternatives to using force;

(7) documentation and report writing, including:

(a) preparing witness statements;

(b) performing log maintenance;

(c) exercising control of information;

(d) taking field notes;

(e) organizing information into a report; and

(f) performing basic writing;

(8) patrol techniques, including:

(a) mobile patrol versus fixed post;

(b) accident prevention;

(c) responding to calls and alarms;

(d) security breaches;

(e) monitoring potential safety hazards; and

(f) police and community relations, including fundamental duties and personal appearance of security officers;

(9) sexual harassment in the workplace; and

(10) a final examination that:

(a) competently examines the student on the subjects included in the eight hours of basic instruction; and

(b) mandates a minimum pass score of 80%.

R156-63a-604. Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

In accordance with Subsection 58-63-302(2)(h), an approved basic firearms training program for armed private security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) care and cleaning of the firearm;

(c) the prohibition against alterations of the firearm's firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment, and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4, and a discussion of 18 USC 44 Section 922; and

(n) instruction that an armed private security officer shall not fire the officer's weapon unless there is an imminent threat to life, and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving imminent threat to life;

(2) a final examination that demonstrates the competency of the participant on the subjects included in the six hours of classroom firearms instruction, with a passing score requirement of 80%; and

(3) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment, and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63a-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".

(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:

(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and

(b) the word "Security", "Contract Security", or "Security Officer".

R156-63a-606. Operating Standards - Badges.

(1) At the contract security company's request, an unarmed or armed private security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63a-607. Operating Standards - Notification and Prohibition of Criminal Status of Contract Security Company Corporate Officer, Director, Partner, Proprietor, Qualifying Agent, Private Security Officer, Manager, or Shareholder.

(1) In accordance with Subsections 58-63-302(1)(h) and (i), 58-63-302(2)(c) and (d), 58-63-302(3)(c), and Section R156-63a-302f, this section applies to any contract security company:

(a) corporate officer;

(b) director;

(c) partner;

(d) proprietor;

(e) qualifying agent;

(f) private security officer;

(g) management personnel employed within Utah having direct responsibility for managing operations of a contract security company within Utah; and

(h) shareholder owning 5% or more as described in Subsection 58-63-302(1)(d)(ii).

(2) A person identified in Subsection (1) shall not participate at any level or capacity in the management, operations, sales, or employment of a contract security company, and shall not own any part of a contract security company (except less than 5% under Subsection 58-63-302(1)(d)(ii), if the person fails to meet a licensing requirement set forth in:

(a) Subsections 58-63-302(1)(h), or 58-63-302(2)(c) or (3)(c), for conviction of a felony, or of a misdemeanor involving moral turpitude, or a of a crime that when considered with the duties and responsibilities of the license by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(b) Subsections 58-63-302(1)(h)(iii) or 58-63-302(2)(d), for conviction of violating any provision set forth in:

(i) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(ii) Subsection 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) A contract security company shall:

(a) within ten calendar days of occurrence, report to the Division in writing any event that occurs in regard to a person identified in Subsection (1), respecting:

(i) any conviction listed under this Subsection (2) or Subsection R156-63b-302f(2) as a disqualifying criminal conviction; and

(ii) any conviction listed under Subsection R156-63b-302f(1) as a potentially disqualifying criminal conviction; and

(b) take appropriate steps to ensure that company ownership and operations comply with this Section.

R156-63a-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63a-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a government-issued identification card or a current state-issued driver license whenever performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63a-610. Operating Standards - Vehicles.

(1) All contract security vehicles shall conform to the following requirements:

(a) green, amber, and white are the only colors that may be used in roof mounted light bars facing forward on a contract security vehicle;

(b) green, amber, and red are the only colors that may be used in roof mounted light bars facing rearward on a contract security vehicle;

(c) light bars may only be operated on private property in which the company has a written contract;

(d) light bars may be operated on public highways only when personally directed to do so by a peace officer; and

(e) all contract security vehicles shall meet the requirements of Section 41-6a-1616.

(2) A contract security company or its personnel may not utilize a vehicle whose marking, lighting and signal devices:

(a) display any form of blue lighting;

(b) use a siren in any manner;

(c) display a star or star badge insignia; or

(d) employ any wording that suggests they are connected with law enforcement.

(3) A contract security company vehicle may have a public address system, an air horn, or both.

(4) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than four inches in height and in a color contrasting with the color of the contract security company vehicle and shall be legible from a reasonable distance.

R156-63a-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;

(b) restraining, detaining, and search and seizure;

(c) felony and misdemeanor definitions;

(d) observing and reporting;

(e) ingress and egress control;

(f) natural disaster preparation;

(g) alarm systems, locks, and keys;

(h) radio and telephone communications;

(i) crowd control;

(j) public relations;

(k) personal appearance and demeanor;

(l) bomb threats;

(m) fire prevention;

(n) mental illness;

(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers;
(r) sexual harassment in the workplace; and
(s) hazardous chemical release.
(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63a-612. Operating Standards - Display of License.
The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63a-613. Operating Standards - Notification of Criminal Arrest, Charge, Indictment, or Conviction - Notification of On-Duty Firearm Discharge.
(1) In accordance with Subsection 58-63-302(2)(c) and (3)(c):
(a) A licensed armed or unarmed private security officer shall notify the licensee's employing contract security company, or if none, shall notify the Division, within 72 hours of being arrested, charged, indicted, or convicted for:
(i) any criminal offense above the level of a Class C misdemeanor;
(ii) any offense set forth in:
(A) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons;
(B) Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons;
(C) Subsections 58-63-302(2)(c), or (3)(c), concerning a felony, a misdemeanor involving moral turpitude, or a crime that when considered with the duties and responsibilities of a private security officer by the Division and the Board indicates that the best interests of the public are not served by granting the license; or
(D) Subsection R156-63a-302f(1), concerning certain potentially disqualifying criminal offenses;
(b) A contract security company shall notify the Division within 72 hours of receiving notification, or becoming aware, of any arrest, charge, indictment, or conviction of any of its licensed employees under this Subsection (1).
(c) Notification under this Subsection (1)(b) shall be in writing, and include:
(i) the employee's name;
(ii) the name of the court or arresting agency, if applicable;
(iii) the court or agency case number or similar case identifier;
(iv) the date of the arrest, charge, indictment, or conviction; and
(v) the nature of the criminal offense or violation.
(2) In accordance with Subsections 58-63-302(2) and 58-1-202(1)(d), the following notice and appearance standards shall apply to an on-duty discharge of a firearm by an armed private security officer:
(a) Within 24 hours of the on-duty discharge, the armed private security officer shall notify the officer's employing contract security company, or if none, then the armed private security officer shall notify the Division.
(b) Within 72 hours of receiving notification, or becoming aware, of an on-duty firearm discharge by its employee, the employing contract security company shall notify the Division.
(c) Notification under this Subsection (2) shall be in writing, and include:
(i) the employee's name;
(ii) the date of the firearm discharge;
(iii) the nature of the firearm discharge; and
(iv) the physical location of the firearm discharge.
(d) The Security Services Licensing Board shall require a mandatory appearance before the Board by the qualifying agent over that officer, to review the company policy and procedure for dealing with an on-duty discharge.

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58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-63b. Security Personnel Licensing Act Armored Car Rule.
R156-63b-101. Title.

This rule is known as the "Security Personnel Licensing Act Armored Car Rule."

R156-63b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means a basic education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-603.

(2) "Approved basic firearms training program" means a firearms education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-604.

(3) "Armored car company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom the peace officer is employed.

(4) "Armored car company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another and are owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(viii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Corporate officer" as defined in Subsection 58-63-102(9), includes an individual who is on file with the Division of Corporations and Commercial Code as a limited liability company's company officer or "governing person" as defined in Subsection 48-3a-102(7), or as a limited partnership's "general partner" as defined in Subsection 48-2e-102(8).

(9) "Employee" means an individual providing services in the armored car industry for compensation when the amount of compensation is based directly upon the armored car services provided, and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(10) "Instructor" means a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, who has fulfilled the instructor experience and training requirements set forth in Section R156-63b-602.

(11) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63b-304.

(12) "Qualifying agent" means a natural person who meets all of the requirements set forth in Subsection 58-63-302(1)(c).

(13) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or armored car company logo that clips onto or is placed over the front pocket.

(14) "Supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(15) "Trainer" has the same meaning as "instructor".

(16) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-63b-502.

R156-63b-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 63.

R156-63b-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.

R156-63b-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an armored car company shall be accompanied by:

(a) two fingerprint cards for each of the applicant's:

(i) qualifying agent;

(ii) corporate officers;

(iii) directors;

(iv) equity holders or shareholders owning more than 5% of the equity or outstanding shares;

(v) partners;

(vi) proprietors; and

(vii) responsible management personnel; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each of the persons required to provide a fingerprint card under Subsection (1)(a) above.

(2) An application for licensure as an armored car security officer shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records for the applicant with:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

R156-63b-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-63-302(4)(g), an applicant for licensure as an armored car security officer shall successfully complete an approved basic education and training program as defined in Subsection R156-63b-102(1).

R156-63b-302c. Qualifications for Licensure - Firearm Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-63-302(4)(h), an applicant for licensure as an armored car security officer shall successfully complete an approved basic firearms training program as defined in Subsection R156-63b-102(2).

R156-63b-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established herein.

(1) The qualifying agent for an applicant who is an armored car company shall obtain a passing score of at least 75% on the Utah Armored Car Company Qualifying Agent Examination.

(2) An applicant for licensure as an armored car security officer shall obtain a score of at least 80% on the approved basic education and training program's final examination.

R156-63b-302e. Qualification for Licensure - Liability Insurance for a Armored Car Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as an armored car company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) libel and slander;

(e) broad form property damage;

(f) damage to property in the care, custody or control of the armored car company; and

(g) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $500,000 for each incident and not less than $2,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All armored car companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All armored car companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63b-302f. Qualifications for Licensure - Age Requirement for Armored Car Security Officer.

In accordance with Subsections 76-10-509(1) and 76-10-509.4, an armored car security officer must be 18 years of age or older at the time of submitting an application for licensure.

R156-63b-302g. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In accordance with Subsections 58-63-302(1)(h) and (4)(c), in addition to those criminal convictions prohibiting licensure, the following criminal convictions may disqualify an applicant or licensee from obtaining or holding an armored car security officer license, or an armored car company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;

(b) theft, including retail theft, as defined in Title 76;

(c) larceny;

(d) sex offenses as defined in Title 76, Chapter 5, Part 4;

(e) any offense involving a controlled substance as defined in Subsection 58-37-2(1)(f);

(f) fraud;

(g) extortion;

(h) treason;

(i) forgery;

(j) arson;

(k) kidnapping;

(l) perjury;

(m) conspiracy to commit any of the offenses listed herein;

(n) hijacking;

(o) burglary;

(p) escape from jail, prison, or custody;

(q) false or bogus checks;

(r) terrorist activities;

(s) desertion;

(t) pornography;

(u) two or more convictions for driving under the influence of alcohol within the last three years; and

(v) any attempt to commit any of the above offenses.

(2) An applicant may not obtain initial licensure or license renewal as an armored car security officer or as an armored car company, and the license of an armored car security officer or of an armored car company shall be automatically revoked, if the applicant or licensee is in violation of any provision set forth in:

(a) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(b) Utah Code Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) In accordance with Subsection 58-63-302(1), if the applicant or licensee is an armored car company, the background of the following individuals shall be considered:

(a) corporate officer;

(b) director;

(c) any shareholder owning 5% or more of the outstanding stock of the company as described in Subsection 58-63-302(1)(d)(ii);

(d) partner;

(e) proprietor;

(f) qualifying agent; and

(g) management personnel employed within Utah or having direct responsibility for managing operations of the company within Utah.

(4) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis in accordance with Section R156-1-302.

R156-63b-302h. Qualifications for Licensure - Immediate Issuance of an Interim Permit.

In accordance with Section 58-63-310, upon receipt of a complete application for licensure as an armored car security officer, the Division may immediately issue an interim permit to the applicant, if the applicant:

(1)(a) submits with the application an official criminal history report from the Bureau of Criminal Identification, Utah Department of Public Safety, showing "No Criminal Record Found";

(b) has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(c) has not had a license to practice an occupation or

profession denied, revoked, suspended, restricted, or placed on probation.

(2) If an applicant's application is denied, an interim permit issued under this section shall automatically expire.

R156-63b-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 63 is established by rule in Section R156-1-308a.

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

R156-63b-304. Continuing Education for Armored Car Security Officers as a Condition of Renewal.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the following continuing education requirements are established as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armored car security officer:

(1) An armored car security officers shall complete at least 32 hours of continuing education during each two-year renewal cycle. A minimum of 16 hours shall be core continuing education; the remaining hours may consist of professional continuing education or core continuing education.

(a) "Core continuing education" is defined as education completed during a two-year renewal cycle, that covers each of the following topics:

(i) company operational procedures manual;

(ii) applicable state laws and rules;

(iii) legal powers and limitations of private security officers;

(iv) observation and reporting techniques;

(v) ethics;

(vi) management of aggressive behavior, use of force, de-escalation techniques;

(vii) emergency techniques; and

(viii) a recognized basic life saving course to obtain or maintain certification in:

(A) cardiopulmonary resuscitation(CPR);

(B) automated external defibrillator (AED);

(C) first aid; or

(D) any other recognized basic life-saving skills.

(b) "Professional continuing education" is defined as education covering one or more of the following topics:

(i) executive protection;

(ii) basic self-defense;

(iii) driving techniques for the security professional;

(iv) escort techniques;

(v) crowd control;

(vi) access control and the use of electronic detection devices;

(vii) use of defensive items and objects;

(viii) homeland security involving bomb threats and anti-terrorism;

(ix) Americans with Disabilities Act (ADA) compliance; or

(x) any other topic relevant to the education of armored car security professionals.

(2) In addition to the 32 hours of core/professional continuing education, an armored car security officer shall complete at least 16 hours of continuing firearms education and training during each two-year renewal cycle. Continuing firearms education and training:

(a) shall be completed in four-hour blocks every six months;

(b) may not include any hours for the continuing education requirement in Subsection R156-63b-304(2);

(c) shall comply with the provisions of Title 15, USC Chapter 85, the Armored Car Industry Reciprocity Act; and

(d) shall include at minimum:

(i) live classroom instruction concerning:

(A) restrictions in the use of deadly force; and

(B) firearms safety on duty, at home, and on the range; and

(ii) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(3) Credit for continuing education shall be recognized as follows:

(a) unlimited hours for core, professional, and firearm continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) unlimited hours for professional continuing education provided via the Internet, if the course provider verifies registration and participation in the courses by means of an exam which demonstrates that the participant has learned the material presented;

(c) two hours for each hour of lecturing, training, or instructing a course, if it is the first time the material has been taught during the preceding 12 months, up to a maximum of 12 hours during each two-year renewal period; the type of credit received - whether core, professional, or firearms education and training - shall be based on the subject taught; and

(d) one professional continuing education hour for each hour of service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee, up to a maximum of six hours during each two-year renewal period.

(4) Modification of Required Continuing Education Hours.

(a) A licensee who fails to complete the required four hours of continuing firearms education and training within the appropriate six-month period shall complete one and one half times the number of hours the licensee was deficient for the reporting period ("penalty" hours). Penalty hours shall not satisfy in whole or in part any of the continuing firearms education and training hours required for subsequent renewal of the license.

(b) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased proportionately.

(c) The Division may defer or waive continuing education requirements as provided in Section R156-1-308d.

(5) A licensee shall maintain documentation showing compliance with the requirements of this section, such as certificates of completion or course handouts and materials, for a period of three years from the end of the renewal period for which the continuing education is due.

(6) An armored car security company licensed under this chapter shall:

(a) review continuing education courses and approve for its employees only those courses that meet the requirements of this section;

(b)(i) maintain accurate records of its approved continuing education courses and of each employee's attendance and course completion; and

(ii) make such records available for audit by representatives of the Division; and

(c) ensure that each provider of its approved continuing education courses:

(i) maintains accurate records of attendance and course completion, by individual licensee, that are available for review by the licensed company, the Division, and the

licensee;

(ii) provides individuals completing the course a certificate identifying the:

(A) name of the individual;

(B) date the course was taken;

(C) location where the course was taken or type of Internet course taken;

(D) title of the course identifying its topic(s) as outlined in Subsection R156-63b-304(1);

(E) name of the continuing education provider and instructor;

(F) exam score for any exam taken; and

(G) number of continuing education hours completed.

(7) On a random basis, the Division may assign monitors at no charge to attend a continuing education course for the purposes of evaluating the course and the instructor.

(8) The initial licensure education and training programs defined in Subsections R156-63b-102(1) and (2) may not be used to satisfy, in whole or in part, any of the continuing education requirements of this section.

R156-63b-305. Criminal History Renewal and Reinstatement Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and R156-1-302, a criminal history background check is required for all applications for renewal and reinstatement.

(2) The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Sections 58-63-302 and R156-63b-302g to determine appropriate licensure action.

R156-63b-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed armored car company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the armored car company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-504.

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an armored car security officer or as an armored car company so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;

(8) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612;

(9) pursuant to Subsection R156-63b-612(1), failing as an armored car company or an armored car security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsection 58-63-302(1)(h), (2)(c), or (3)(c);

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company; and

(11) failing as an armored car security officer to complete required continuing education hours, in violation of Section R156-63b-304; and

(12) failing as an armored car security company to comply with R156-63b-304(6) regarding continuing education courses or providers.

R156-63b-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of an armored car company or an armored car security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(h), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

Violation	Armored Car Company	Armed or Unarmed Armored Car Security Officer
FIRST OFFENSE		
58-63-501(1)	$ 800.00	N/A
58-63-501(4)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(4)	$1,600.00	$1,000.00

(3) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

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

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

(6) 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.

R156-63b-601. Operating Standards - Firearms.

(1) An armored car security officer shall carry only that firearm with which the officer has passed an approved basic firearm training program.

(2) Shotguns and rifles owned and issued by the armored car company, may be used in situations where they would constitute an appropriate defense for the armored car security officer, if the officer has successfully completed a firearms training program specific to shotgun or rifle use.

(3) An armored car security officer shall not carry a firearm except when acting on official duty as an employee of an armored car company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63b-602. Division Approval and Operating Standards - Training Program for Armored Car Security Officers.

(1) To obtain Division approval of a training program for armored car security officers, the program owner shall submit to the Division:

(a) an application in a form prescribed by the Division;

(b) a fee for the approval of the program; and

(c) a written education and training manual which includes:

(i) a course syllabus with an hourly breakdown of the course outline and training schedule;

(ii) a course curriculum;

(iii) a four-hour instructor training program;

(iv) testing tools; and

(v) if an online curriculum or multi-media learning tools are used, a copy of the original medium.

(2) If any individual or entity uses a Division-approved training program that the user does not own, the user shall submit to and maintain with the Division a current copy of the user's written contract with the program owner, which identifies the duration allowed for use. The user shall promptly update this information in writing with the Division as necessary.

(3) A course curriculum shall include the following content:

(a) for a basic education and training program, the content established in Section R156-63b-603; and

(b) for a basic firearms training program, the content established in Section R156-63b-604.

(4) All instructors teaching an approved basic education and training program shall:

(a) have at least three years of supervisory experience reasonably related to providing armored car security services; and

(b) have completed a four-hour instructor training program which shall include the following:

(i) motivation and the learning process;

(ii) teacher preparation and teaching methods;

(iii) classroom management;

(iv) testing; and

(v) instructional evaluation.

(5) All instructors teaching an approved basic firearms training program shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructor certification; or

(b) current certification as a firearms instructor by:

(i) the National Rifle Association;

(ii) a Utah law enforcement agency;

(iii) a Federal law enforcement agency;

(iv) a branch of the United States military; or

(v) other qualification or certification determined by the Division, in collaboration with the Board, to be equivalent.

(6) When an instructor for a Division-approved training program begins providing instruction, the user of the Division-approved training program shall report the instructor's name to the Division, on a form supplied by the Division.

(7) When an instructor for a Division-approved training program ceases to instruct for that program, or no longer meets instructor requirements, the user of the Division-approved training program shall report that information and the instructor's name to the Division, on a form supplied by the Division.

(8) All approved training programs shall maintain training records on each individual trained, including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the program's files for at least three years.

(9) If an approved training program provider ceases to engage in business, the provider shall establish a method approved by the Division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

R156-63b-603. Content of Approved Basic Education and Training Program.

In accordance with Subsection 58-63-302(4)(g), an approved basic education and training program for armored car security officers shall have at least eight hours of classroom or online instruction, including:

(1) the nature and role of private security, including an armored car security officer's:

(a) scope and limits of authority;

(b) civil liability;

(c) role in today's society;

(2) state laws and rules applicable to armored car security officers;

(3) legal responsibilities of armored car security officers, including:

(a) constitutional law;

(b) search and seizure; and

(c) other such topics;

(4) security ethics;

(5) the use of force, emphasizing the de-escalation of force and alternatives to using force;

(6) police and community relations, including fundamental duties and the personal appearance of an armored car security officer;

(7) sexual harassment in the workplace;

(8) driving policies and procedures, driver training and vehicle orientation;

(9) emergency situation response, including:

(a) terminal security;

(b) traffic accidents;

(c) robbery situations;

(d) homeland security;

(e) reducing risk potential through street procedures and tactics;

(f) securing robbery scenes;

(g) dealing with the media;

(10) armored operations, including:

(a) proper paperwork;

(b) street control procedures;

(c) vehicle transfers;

(d) vault procedures;

(e) other proper branch procedures; and

(11) A final examination that:

(a) competently examines the student on the subjects included in the eight hours of basic classroom instruction; and

(b) mandates a minimum pass score of 80%.

R156-63b-604. Content of Approved Basic Firearms Training Program.

In accordance with Subsection 58-63-302(4)(h), an approved basic firearms training program for armored car security officers shall have the following components:

(1) at least six hours of classroom firearms instruction, to include the following:

(a) the firearm and its ammunition;

(b) care and cleaning of the firearm;

(c) the prohibition against alterations of the firearm's firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on the range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment, and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4, and a discussion of 18 USC 44 Section 922; and

(n) instruction that an armored car security officer shall not fire the officer's weapon unless there is an imminent threat to life, and at no time shall the weapon be drawn as a threat or means to force compliance with any verbal directive not involving imminent threat to life;

(2) a final examination that demonstrates the competency of the participant on the subjects included in the six hours of classroom firearms instruction, with a passing score requirement of 80%; and

(3) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment, and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63b-605. Operating Standards - Uniform Requirements.

(1) All armored car security officers while on duty shall wear the uniform of their armored car company employer unless assigned to work undercover.

(2) The name of the armored car company shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(3) Each armored car company officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains the name or logo of the armored car company under whom the armored car security officer is employed.

R156-63b-606. Operating Standards - Badges.

(1) At the armored car company's request, an armored car security officer may, while in uniform and while on duty, wear a shield inscribed with the words "Security," or "Security Officer". The shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63b-607. Operating Standards - Notification and Prohibition of Criminal Status of Armored Car Company Corporate Officer, Director, Partner, Proprietor, Qualifying Agent, Armored Car Security Officer, Manager, or Shareholder.

(1) In accordance with Subsections 58-63-302(1)(h) and (i), 58-63-302(4)(c) and (d), and Section R156-63b-302g, this section applies to any armored car company:

(a) corporate officer;

(b) director;

(c) partner;

(d) proprietor;

(e) qualifying agent;

(f) armored car security officer;

(g) management personnel employed within Utah or having direct responsibility for managing operations of the armored car company within Utah; and

(h) shareholder owning 5% or more as described in Subsection 58-63-302(1)(d)(ii).

(2) A person identified in Subsection (1) shall not participate at any level or capacity in the management, operations, sales, or employment of an armored car company, and shall not own any part of an armored car company (except less than 5% as described in Subsection 58-63-302(1)(d)(ii)), if the person fails to meet a licensing requirement set forth in:

(a) Subsections 58-63-302(1)(h) or 58-63-302(4)(c), for conviction of a felony, or of a misdemeanor involving moral turpitude, or of a crime that when considered with the duties and responsibilities of the license by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(b) Subsections 58-63-302(1)(h)(iii) or 58-63-302(4)(d), for conviction of violating any provision set forth in:

(i) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons; or

(ii) Subsection 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons.

(3) An armored car company shall:

(a) within ten calendar days of occurrence, report to the Division in writing any event that occurs in regard to a person identified in Subsection (1), respecting:

(i) any conviction listed under this Subsection (2) or Subsection R156-63b-302g(2) as a disqualifying criminal conviction; and

(ii) any conviction listed under Subsection R156-63b-302g(1) as a potentially disqualifying criminal conviction; and

(b) take appropriate steps to ensure that company ownership and operations comply with this Section.

R156-63b-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No armored car company shall use any name which implies intentionally or otherwise that the company is connected or associated with any public law enforcement agency.

(2) No armored car company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement

agency.

R156-63b-609. Operating Standards - Proper Identification of Armored Car Security Officers.

All armored car security officers shall carry a valid security license together with a government-issued identification card or a current state-issued driver license whenever performing the duties of an armored car security officer and shall exhibit said license and identification upon request.

R156-63b-610. Operating Standards - Operational Procedures Manual.

(1) Each armored car company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for armored car security officers;
(r) sexual harassment in the workplace; and
(s) hazardous chemical release.

(2) The operations and procedures manual shall be immediately available to the Division upon request.

R156-63b-611. Operating Standards - Display of License.

The license issued to an armored car company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63b-612. Operating Standards - Notification of Criminal Arrest, Charge, Indictment, or Conviction - Notification of On-Duty Firearm Discharge.

(1) In accordance with Subsection 58-63-302(4)(c):

(a) A licensed armored car security officer shall notify the licensee's employing armored car company, or if none, shall notify the Division, within 72 hours of being arrested, charged, indicted, or convicted for:

(i) any criminal offense above the level of a Class C misdemeanor;

(ii) any offense set forth in:

(A) 18 U.S.C. Chapter 44, 922(g)1-9, concerning restrictions on firearms and ammunition transportation by certain persons;

(B) Section 76-10-503, concerning restrictions on possession, purchase, transfer, or ownership of dangerous weapons by certain persons;

(C) Subsections 58-63-302(4)(c), concerning a felony, a misdemeanor involving moral turpitude, or a crime that when considered with the duties and responsibilities of an armored car security officer by the Division and the Board indicates that the best interests of the public are not served by granting the license; or

(D) Subsection R156-63b-302g(1), concerning certain potentially disqualifying criminal offenses.

(b) An armored car company shall notify the Division within 72 hours of receiving notification, or becoming aware, of any arrest, charge, indictment, or conviction of any of its licensed employees under this Subsection (1).

(c) Notification under this Subsection (1)(b) shall be in writing, and include:

(i) the employee's name;

(ii) the name of the court or arresting agency, if applicable;

(iii) the court or agency case number or similar case identifier;

(iv) the date of the arrest, charge, indictment, or conviction; and

(v) the nature of the criminal offense or violation.

(2) In accordance with Subsection 58-63-302(4) and 58-1-202(1)(d), the following notice and appearance standards shall apply to an on-duty discharge of a firearm by an armored car security officer:

(a) Within 24 hours of the on-duty discharge, the armored car security officer shall notify the officer's employing armored car company, or if none, then the armored car security officer shall notify the Division.

(b) Within 72 hours of receiving notification, or becoming aware, of an on-duty firearm discharge by its employee, the employing armored car company shall notify the Division.

(c) Notification under this Subsection (2) shall be in writing, and include:

(i) the employee's name;

(ii) the date of the firearm discharge;

(iii) the nature of the firearm discharge; and

(iv) the physical location of the firearm discharge.

(d) The Security Services Licensing Board shall require a mandatory appearance before the Board by the qualifying agent over that officer, to review the company policy and procedure for dealing with an on-duty discharge.

KEY: licensing, security guards, armored car security officers, armored car company

May 13, 2019	**58-1-106(1)(a)**
Notice of Continuation May 15, 2018	**58-1-202(1)(a)**
	58-63-101

R277. Education, Administration. **53E-3-401(4) and (10)**
R277-115. LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts.
R277-115-1. Authority and Purpose.

(1) This rule is authorized by:

(a) 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

(b) Subsection 53E-3-401(10), which allows the Board to require an LEA to require in a contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:

(i) Titles 53E, 53F, and 53G; and

(ii) Board rule.

(2) The purpose of this rule is:

(a) to provide standards for an LEA working with a third party provider to ensure the third party provider complies with applicable law.

R277-115-2. Definitions.

(1) "Educational good or service" means the same as that term is defined in Section 53E-3-401.

(2) "Third party provider" means a third party who provides an educational good or service on behalf of an LEA.

R277-115-3. Third Party Provider Provision of Services.

(1) An LEA that contracts with a third party provider to provide an educational good or service on behalf of the LEA shall:

(a) require in the LEA's contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:

(i) Titles 53E, 53F, and 53G; and

(ii) Board rule;

(b) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with the provisions of this rule;

(c) develop a written monitoring plan to supervise the educational good or service provided by the third party provider;

(d) ensure the third party provider is complying with:

(i) federal law;

(ii) state law; and

(iii) Board rules;

(e) monitor and supervise all activities of the third party provider related to the educational good or service provided by the third party provider to the LEA; and

(f) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

(2) An LEA shall:

(a) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and

(b) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.

(3) The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:

(a) the LEA fails to comply with the provisions of this rule; and

(b) the repayment is made in accordance with the procedures established in R277-114.

KEY: third party providers, contracts, monitoring
May 23, 2019 **Art X Sec 3**

R277. Education, Administration.
R277-304. Teacher Preparation Programs.
R277-304-1. 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-6-201(3)(a), which allows the Board to make rules to establish the criteria for obtaining an educator license.

(2)(a) The purpose of this rule is to specify the standards which the Board expects of teacher preparation institution prior to program approval in specified areas.

(b) The standards in this rule apply to the specific educational area and grade level for which the preparation program is designed.

R277-304-2. Definitions.

(1)(a) "Career and technical education" or "CTE" means organized educational programs or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements do not generally require a baccalaureate or advanced degree.

(b) CTE programs provide all students a continuous education system, driven by a student's college and career readiness plan, through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment.

(2) "Clinical experience" means a structured opportunity in which a program candidate is mentored by a licensed educator and evaluated by a teacher leader, school administrator, or university preparation program faculty member, in order to develop and demonstrate competency in the skills and knowledge necessary to be an effective teacher, in a physical classroom, which may include experiences in a virtual classroom.

(3) "Council for the Accreditation of Educator Preparation" or "CAEP" means a national organization that advances equity and excellence in educator preparation through evidence-based accreditation that assures quality and supports continuous improvement to strengthen P-12 student learning.

(4)(a) "Council for Exceptional Children" or "CEC" means an international professional organization dedicated to improving the educational success of both individuals with disabilities and individuals with gifts and talents.

(b) CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.

(5) "Essential Elements" means the alternate academic achievement standards for students with significant cognitive disabilities, established by the Board in the Special Education Rules Manual, dated October 2016, incorporated by reference in Section R277-750-2.

(6)(a) "Multi-tiered system of supports" or "MTSS" means a framework for integrating assessment and intervention to maximize student achievement, reduce behavior problems, and increase long-term success.

(b) The combination of systematic implementation of increasingly intensive intervention, sometime referred to as tiers, and carefully monitoring students' progress, distinguishes MTSS from typical prevention measures.

(c) Emphasis, in MTSS, is placed on ensuring interventions are implemented effectively.

(7) "Utah Core Standards" means the course standards established by the Board in Rule R277-700 for grades K-12.

R277-304-3. General Teacher Preparation.

Prior to approval by the Board, a teacher preparation program shall:

(1) prepare candidates to meet the Utah Effective Teaching Standards in Rule R277-530;

(2) prepare candidates to teach:

(a) the Utah Core Standards; and

(b) the Essential Elements, as appropriate to a candidate's prospective area of licensure as established by the Board;

(3) include school-based clinical experiences for a candidate to observe, practice skills, and reflect on teaching that:

(a) are significant in number, depth, breadth, and duration;

(b) are progressively more complex;

(c) occur in multiple schools and classrooms;

(d) include working with all types of students; and

(e) include creating and consistently implementing beginning of semester or school year classroom procedures and practices;

(4) require the demonstration of competency in:

(a) content and content-specific pedagogy appropriate for the area of licensure;

(b) knowledge of the Utah Educator Professional Standards contained in Rule R277-515;

(c) creating effective learning environments by establishing and implementing routines and procedures with consistent expectations;

(d) skills in providing tier one and tier two instruction and intervention on the Utah Core Standards and positive behavior supports to each student within a multi-tiered system of supports;

(e) integrating technology to support and meaningfully supplement the learning of students, including the effective use of software for personalized learning;

(f) designing, administering, and reviewing educational assessments in a meaningful and ethical manner;

(g) analyzing formative and summative assessments results to inform and modify instruction;

(h) assessing students for competency for the purpose of personalized learning;

(i) skills in implementing personalized learning practices that consider the whole child including:

(i) trauma-informed instructional practices; and

(ii) restorative instructional practices;

(j) knowledge and skills designed to assist in the identification of students with disabilities to meet the needs of students with disabilities in the general classroom, including:

(i) knowledge of the IDEA and Section 504 of the Rehabilitation Act;

(ii) knowledge of the role of non-special-education teachers in the education of students with disabilities;

(iii) knowledge and skills in implementing least restrictive behavior interventions;

(iv) skills in implementing and assessing the results of interventions; and

(v) skills in the implementation of an educational program with accommodations, modifications, services, and supports established by an IEP or a 504 plan for students with disabilities in the general education classroom;

(k) knowledge and skills designed to meet the needs of diverse student populations in the general education classroom, including:

(i) allowing students multiple ways to demonstrate

learning that are sensitive to student diversity;
(ii) creating an environment using a teaching model that is sensitive to multiple experiences and diversity;
(iii) designing, adapting, and delivering instruction to address each student's diverse learning strengths and needs; and
(iv) incorporating tools of language development into planning, instruction, and intervention for students learning English and supporting development of English proficiency; and
(l) knowledge and skills in collaborating with parents and guardians.
(5) for a program applicant accepted on or after January 1, 2020, require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in one or more clinical experiences in each of the following competencies:
(a) implementing the planning and design, delivery, facilitation, assessment, evaluation, and reflection of a unit of instruction, including:
(i) systematic and explicit instructional design and implementation;
(ii) varied evidence-based instructional strategies;
(iii) developmentally appropriate and authentic learning experiences;
(iv) scaffolded instruction;
(v) differentiated instruction;
(vi) instruction targeting higher order thinking and metacognitive skills;
(vii) project-based or competency-based learning opportunities;
(viii) designing and selecting pre-assessments, formative, and summative assessments that align to student learning objectives; and
(ix) revising instructional plans for future implementation or reteaching concepts as appropriate;
(b) integrating cross-disciplinary skills, such as literacy or numeracy, into instruction;
(c) engaging students in the learning process;
(d) utilizing technology to enhance and personalize instruction;
(e) implementing the accommodations, modifications, services, and supports as outlined in a student's IEP or 504 plan;
(f) evaluating student artifacts and assessments for the purposes of:
(i) measuring student understanding;
(ii) modifying instruction;
(iii) targeting tier two instruction and intervention in a multi-tiered system of support;
(iv) providing feedback to students; and
(v) documenting student progress, i.e., assigning an academic grade;
(g) establishing and maintaining classroom procedures and routines that include positive behavior interventions and supports;
(h) establishing and maintaining a positive learning climate;
(i) reflecting on the teaching process and justifying instructional decisions;
(j) collaborating with grade level, subject, or cross-curricular teams to:
(i) analyze student data; and
(ii) inform, plan, and modify instruction;
(k) participating in at least one IEP meeting or parental consultation regarding a student that the program applicant has instructed;
(l) effectively communicating with parents, colleagues, and administration; and
(m) consulting with a school counselor regarding the emotional well-being of students and referring the students to a school counselor when necessary;
(6) include consideration of a candidate's dispositions and suitability for teaching; and
(7) include plans for candidate remediation and exit counseling if applicable.

R277-304-4. Early Childhood and Elementary Preparation Programs.
(1) Prior to approval by the Board, a preparation program for early childhood education or elementary education shall:
(a) align, as appropriate, with:
(i) the 2010 National Association for the Education of Young Children Standards for Initial and Advanced Early Childhood Professional Preparation Programs; or
(ii) the CAEP 2018 K-6 Elementary Teacher Preparation Standards; and
(b) require the demonstration of competency in:
(i) the areas outlined in Section R277-304-3;
(ii) the appropriate content knowledge needed to teach:
(A) literacy, including listening, speaking, writing, and reading;
(B) mathematics;
(C) physical and life science;
(D) health and physical education;
(E) social studies; and
(F) fine arts;
(iii) the science of reading instruction including:
(A) phonemic awareness;
(B) phonics;
(C) fluency;
(D) vocabulary; and
(E) comprehension;
(iv) the science of mathematics instruction, including:
(A) quantitative reasoning;
(B) problem solving;
(C) representation;
(D) numeracy; and
(E) a balance of procedural and conceptual understanding; and
(v) early childhood development and learning.
(2) For a program applicant accepted after January 1, 2020, a preparation program for early childhood or elementary education shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:
(a) all requirements outlined in Subsection R277-304-3(6);
(b) demonstrating content specific pedagogy in each of the areas outlined in Subsection R277-304-4(1)(b)(ii);
(c) diagnosing students struggling with reading and planning and implenting remediation for those students; and
(d) diagnosing students struggling with mathematics and planning and implenting remediation for those students.
(3) An educator preparation program shall apply the standards in this Section R277-304-4 to the specific age group or grade level for which the program of preparation is designed.
(a) An early childhood education program shall focus primarily on early childhood development and learning in kindergarten through grade 3.
(b) An elementary program shall include both early childhood development and learning and elementary content and pedagogy in kindergarten through grade 6.

R277-304-5. Secondary Preparation Programs.

(1) Prior to approval by the Board, a secondary preparation program shall require competency in:

(a) all content competencies established by the Superintendent for a professional educator license in at least one endorsement;

(b) all areas outlined in Section R277-304-3;

(c) including literacy and quantitative learning objectives in content specific classes in alignment with the Utah Core Standards; and

(d) planning instruction and assessment in content-specific teams and in cross-curricular teams.

(2) For a program applicant accepted after January 1, 2020, a secondary preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsection R277-304-3(6);

(b) ensuring student safety and learning in educational labs or shops and extra-curricular settings; and

(c) collaborating with a school counselor, as necessary, to ensure student progress on the student's four-year plan for college and career readiness as described in Rule R277-462.

R277-304-6. Special Education and Preschool Special Education Programs.

(1) Prior to approval by the Board, a special education or preschool special education preparation program shall:

(a) be operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;

(b) aligned with the 2012 Council for Exceptional Children Initial Preparation Standards as informed by the Council for Exceptional Children Specialty Sets for Initial Preparation Programs in one or more of the following special education areas:

(i) Mild/Moderate Disabilities;

(ii) Severe Disabilities;

(iii) Deaf and Hard of Hearing;

(iv) Blind and Visually Impaired;

(v) Deafblind; or

(vi) Preschool Special Education (Birth-Age 5);

(c) require the passage of a special education content knowledge assessment approved by the Superintendent;

(d) require the passage of a Braille assessment approved by the Superintendent for a program in the Blind and Visually Impaired area;

(e) require the demonstration of competency in:

(i) all areas detailed in Section R277-304-3;

(ii) legal and ethical issues surrounding special education, including:

(A) the IDEA;

(B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and

(C) all other applicable statutes and Board rules;

(iii) the IDEA and Board Special Education rules;

(iv) working with other school personnel to implement and evaluate academic and positive behavior supports and interventions for students with disabilities within a multi-tiered system of supports;

(v) training in and supervising the services and supports provided to students with disabilities by general education teachers, related service providers, and paraprofessionals; and

(vi) providing specially designed instruction, including content specific pedagogy, as per IEPs, to students with disabilities, including:

(A) the Utah Core Standards; and

(B) the Essential Elements as appropriate to a candidate's prospective area of licensure as established by the Board;

(C) skills in assessing and addressing the educational needs and progress of students with disabilities;

(D) skills in implementing and assessing the results of research and evidence-based interventions for students with disabilities; and

(E) skills in implementing an educational program with accommodations, modifications, services, and supports established by an IEP for students with disabilities.

(2) For a program applicant accepted after January 1, 2020, a special education or preschool special education preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsection R277-304-3(6);

(b) creating learning goals and objectives for a student with disabilities that are specific, measurable, time-bound, and aligned to identified student needs and the Utah Core Standards;

(c) designing or adapting learning environments for diverse student populations that encourage active participation in individual and group activities;

(d) monitoring school compliance with the provisions of multiple student's IEP and Section 504 plans;

(e) conducting a student IEP meeting under the supervision of a licensed special education teacher;

(f) using knowledge of measurement principles and practices to interpret assessment information in making instructional, eligibility, program, and placement decisions for students with disabilities, including those from culturally or linguistically diverse backgrounds;

(g) developing and implementing a secondary transition plan as it relates to post-secondary education and training, competitive employment and independent living; and

(h) communicating with parents of students with disabilities to ensure they are informed regarding the progress of their student and their right to due process.

R277-304-7. Deaf Education Preparation Programs.

(1) Prior to approval by the Board, a deaf education preparation program shall:

(a) be operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;

(b) be aligned with the National Association of State Directors of Special Education, Inc., Optimizing Outcomes for Students who are Deaf or Hard of Hearing, Educational Service Guidelines, Third Edition;

(c) be focused on one or more of the following areas:

(i) teaching students who are deaf or hard of hearing from birth to age five using both listening and spoken language strategies and American Sign Language;

(ii) teaching students who are deaf or hard of hearing with listening and spoken language strategies; or

(iii) teaching students who are deaf or hard of hearing with strategies that promote the development of American Sign Language and English literacy across the curriculum;

(d) require the passage of a deaf education content knowledge assessment approved by the Superintendent;

(e) require demonstration of competency in:

(i) the areas detailed in Section R277-304-3.

(ii) legal and ethical issues surrounding special education, including:

(A) the IDEA;

(B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and

(C) all other applicable statutes and Board rules;

(iii) addressing specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;

(iv) skills for incorporating language into all aspects of the curriculum;

(v) pedagogical skills unique to teaching reading, writing, mathematics, and other content areas to deaf and hard of hearing students;

(vi) basic fluency in the use of American Sign Language;

(vii) knowledge of the audiological and physiological components of audition;

(viii) skills for teaching speech to deaf and hard of hearing students;

(ix) the socio-cultural and psychological implications of hearing loss; and

(x) assessing and addressing the educational needs and educational progress of deaf and hard of hearing students.

(2) For a program applicant accepted after January 1, 2020, a deaf or hard of hearing education preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsection R277-304-3(6);

(b) for a program focused on Subsection R277-304-7(1)(c)(i):

(i) assessing early childhood language development and assessment in American Sign Language and spoken English;

(ii) working with families with students who are deaf or hard of hearing while respecting a variety of communication modalities;

(iii) integrating language, speech, and listening everyday activities;

(iv) sharing knowledge with families with students who are deaf or hard of hearing about the complexities of deaf culture, including norms and behaviors of the deaf community;

(v) developing auditory perception in children and educating parents about developmental milestones for listening skills; and

(vi) proficiency in American Sign Language as demonstrate by passing an assessment approved by the Superintendent;

(c) for a program focused on Subsection R277-304-7(1)(c)(ii):

(i) developing auditory perception in children and strategies for developing listening and spoken language in deaf and hard of hearing students;

(ii) demonstrating understanding and expertise regarding early childhood spoken language development;

(iii) involving family members with students who are deaf or hard of hearing in learning and therapeutic activities;

(iv) integrating speech, listening, and spoken language in preschool and early elementary content areas; and

(v) integrating current listening technology, including troubleshooting such technology; and

(d) for a program focused on Subsection R277-304-7(1)(c)(iii):

(i) integrating American Sign Language into instruction of core academic content for all school-age students;

(ii) enhancing bilingual literacy of students who are deaf or hard of hearing in both American Sign Language and English;

(iii) integrating respect and understanding of deaf culture into instruction;

(iv) demonstrating understanding and expertise regarding American Sign Language language development; and

(v) proficiency in American Sign Language as demonstrated by passing an assessment approved by the Superintendent.

R277-304-8. Career and Technical Education Preparation Programs.

(1) Prior to approval by the Board, a CTE teacher preparation program designed for individuals that do not hold a bachelor's degree or higher shall:

(a) focus on one or more of the following areas:

(i) family and consumer sciences;

(ii) health sciences;

(iii) information technology;

(iv) skilled and technical sciences; or

(v) work-based learning;

(b) require that candidates have six years of documented, related occupational experiences within the 10 years prior to the program application in an approved CTE license area;

(c) require demonstration of competency in all areas detailed in Sections R277-304-3 and R277-304-5;

(d) For a program applicant accepted after January 1, 2020, a CTE preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in all requirements outlined in Section R277-304-5; and

(e) require candidates to hold the applicable license or certificate issued by the Utah State Department of Commerce, Division of Occupational and Professional Licensing in any area where such licensure or certification exists.

(2) A program may count an associate's degree in a related area for up to two years of occupational experience to satisfy the requirement in Subsection R277-304-8(1)(b).

(3)(a) An approved program may request a waiver from the Superintendent of the occupational experience required for a candidate if the candidate has passed an approved competency examination in the respective field at or above the passing score established by the Superintendent.

(b) The Superintendent may grant a waiver under Subsection (2)(a) for up to five years from the date the candidate passed the examination.

KEY: teacher preparation, programs, educators
May 23, 2019 **Art X Sec 3**
53A-1-401

R277. Education, Administration.
R277-462. Comprehensive Counseling and Guidance Program.
R277-462-1. Definitions.

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

B. "Comprehensive Counseling and Guidance Program" or "Program" means the organization of resources to meet the priority needs of students and inform and involve parents or guardians through four delivery system components:

(1) school guidance curriculum which means providing guidance content to all students in a systemic way;

(2) individual student planning which means individualized education and career planning, including student college and career planning with all students;

(3) responsive services and dropout prevention component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

C. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives designated by the USOE comprised of school district counseling supervisors, school district career and technical education directors, PTA, the school counselor professional association, practicing school counselors, and others designated by the USOE.

D. "Counselor to student ratio" means licensed school counselors full time equivalent (FTE), or percentage thereof, who by license and assignment are identified as school counselors for secondary students on October 1 of each year compared to the secondary student enrollment on October 1 of each year.

E. "Direct services" means time spent on the school guidance curriculum, individual student planning, including SEOP/Plan for College and Career Readiness, and responsive services/dropout prevention activities meeting students' identified needs as discerned by students, school personnel and parents or guardians consistent with LEA policy.

F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

G. "School counselor" means an educator licensed as a school counselor in the state of Utah consistent with R277-506 and assigned to provide counseling and information to students to make appropriate educational and career choices.

H. "Secondary school" means a school providing services to students in grades 7-12.

I. "Secondary student" means a student in grades 7-12.

J. "SEOP/Plan for College and Career Readiness" means a student education occupation plan. An SEOP/Plan for College and Career Readiness is a developmentally organized intervention process that includes:

(1) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent or guardian, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies, including job placement when appropriate; and

(5) identification of post secondary goals and approved sequence of courses.

K. "Student achievement" means academic performance, career development, multi cultural/global citizenship, personal/social development, continued student engagement in learning, attendance, SEOP/Plan for College and Career Readiness outcomes and other measures of adequate yearly progress.

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

M. "Utah Career and Technical Education Consortium" means representatives of nine Career and Technical Education Regional Planning Areas.

N. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which an LEA is eligible.

R277-462-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Subsection 53E-2-304(2)(b) which directs local boards to develop policies for the implementation of student SEOP/Plan for College and Career Readiness, and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

C. This rule establishes counselor to student ratios as a requirement for all secondary schools.

D. This rule establishes provisions for LEAs not meeting the minimum counselor to student ratios.

E. This rule directs that LEA and building level policies and practices shall free licensed school counselors for appropriate identified activities with secondary students.

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, secondary schools shall implement SEOP/Plan for College and Career Readiness policies and practices, consistent with Sub53E-2-304(2)(b), local board or charter school governing board policies, and the school improvement plans developed for AdvancED Accreditation and required under Section 53G-7-1204.

(2) Consistent with the Utah Model for Comprehensive Counseling and Guidance: K-12 Programs, the USOE shall designate to each LEA secondary school, that has a USOE-approved school counseling program, a WPU base for the first 400 students as determined by the October 1 enrollment of the previous fiscal year. The USOE shall also designate a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students, if the local Program maintains Program criteria and ratios required in R277-462-5.

(3) The USOE shall give priority for funding to grades nine through twelve for career and technical education programs including the Comprehensive Counseling and Guidance Program and any remaining funds to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. The USOE shall distribute funds directed to grades seven and eight according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The USOE shall integrate the LEA Comprehensive Counseling and Guidance Program into the mission of the schools consistently with the AdvancED Accreditation process as defined in R277-410, Accreditation of Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student achievement included in the local school improvement plan.

(5) Secondary schools shall qualify for Comprehensive

Counseling and Guidance Program funds through participation in a regular schedule of on-site reviews by the USOE Comprehensive Counseling and Guidance Program specialist in the formal process and team members determined by the LEA's authorizing agency during the interim review process. The USOE shall schedule the on-site review process for secondary schools as defined in R277-410 which shall take place at a minimum every six years with three year interim reviews, in a format determined by the LEA authorizing agency. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities consistent with Program models and goals in individual student planning, guidance curriculum, responsive services and system support.

(6) If a charter school requires assistance from a school district in conducting the charter school's on-site review, the charter school shall negotiate that payment.

(7) The USOE shall distribute Comprehensive Counseling and Guidance Program funds to LEAs for secondary schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty-five percent of aggregate counselors' time is devoted to DIRECT service to students through a balanced program of individual planning, school guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory/steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;

(h) Available responsive services to address the immediate concerns and identified needs of students through an education-oriented and programmatic approach; services should compliment and coordinate with existing school programs, families, and school and community resources;

(i) Delivery to students of a developmental and sequential school guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. A school/LEA shall set priorities for Guidance curriculum consistent with the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Facilitation by school counselors of SEOP/Plan for College and Career Readiness, both as a process and a product;

(l) Involvement of parents/guardians in all available Comprehensive Counseling and Guidance Program steering/advisory committees; and

(m) Program elements that are designed to recognize and address the needs of diverse students.

B. All LEA governing boards that receive Comprehensive Counseling and Guidance Program funds shall provide written certification that all Program standards are met by each school consistent with USOE cycles and using USOE forms.

(1) All LEAs receiving Comprehensive Counseling and Guidance Program funds shall provide school-based data projects demonstrating program or intervention effectiveness as required by the USOE.

(2) School counselors shall not devote significant time to non-school counseling activities, including test coordination and assessment, and other activities inconsistent with the Program.

R277-462-4. Student Education Occupation Planning in a Plan for College and Career Readiness.

A. Secondary schools that receive Comprehensive Counseling and Guidance funds shall complete a written SEOP/Plan for College and Career Readiness for all students.

B. Parents/guardians shall sign plans.

C. Students shall complete four year plans at the beginning of their seventh grade year.

D. Students' schools shall maintain plans.

E. Students' course registration and class changes shall be consistent with their written SEOP/Plan for College and Career Readiness.

F. Schools shall implement students' SEOP/Plan for College and Career Readiness process consistent with the policies and goals of the LEAs' Comprehensive Counseling and Guidance Program models. The student, student's parent/guardian and school personnel shall cooperatively develop the SEOP/Plan for College and Career Readiness during the first two years in which the student is enrolled in grades 7-12 in the LEA. The implementation for the SEOP/Plan for College and Career Readiness shall include the following conferences:

(1) 7th and 8th grades: minimally one individual and one group conference during the two years;

(2) 9th and 10th grades: minimally one individual conference and one group conference during the two years;

(3) 11th and 12th grades: minimally one individual conference and one group conference during the two years; and

(4) other meetings, as necessary.

R277-462-5. School Counselor to Student Ratios.

A. All LEAs shall certify to the USOE by October 1 annually:

(1) the full time equivalent licensed school counselors employed and assigned to each school;

(2) that secondary school counselor to secondary student ratios at the LEA level are one (counselor) to 350 (students) or better; and

(3) that variations requiring less than a .25 full time equivalent licensed school counselor shall be permitted at the school level.

B. June 1 annually, LEAs not meeting the ratio required under R277-462-5A(2), shall submit to the Board a plan to be approved for meeting established ratios in a reasonable time frame to continue to receive Comprehensive Counseling and Guidance Program and Minimum School Program funding.

C. LEAs that do not satisfy required counselor to student ratios shall receive reasonable notice and reasonable time periods and opportunities to explain and remedy the failure to comply.

D. As additional funds for Comprehensive Counseling and Guidance Programs become available, the Board may

require LEAs to have lower counselor to student ratios, following notice to LEAs. **53E-3-401(4)**

R277-462-6. Use of Comprehensive Counseling and Guidance Program Funds.

A. LEAs shall satisfy all provisions of R277-462 including established counselor to student ratios, in order to receive Comprehensive Counseling and Guidance Program funds.

B. LEAs shall use funds for students in grades 7-12.

C. LEAs may use funds to provide a school guidance curriculum.

D. LEAs may use funds to provide student activities that support the SEOP/Plan for College and Career Readiness process.

E. LEAs may use funds for personnel costs including clerical positions that support the SEOP/Plan for College and Career Readiness process.

F. LEAs may use funds for Career Center equipment or materials such as computers, media equipment, computer software, occupational information, SEOP/Plan for College and Career Readiness folders or educational information.

G. LEAs may use funds for professional development for personnel involved in the Comprehensive Counseling and Guidance Program.

H. LEAs may use funds for the expenses of extended days or years which are required to run the Program.

I. LEAs may use funds for classroom guidance curriculum materials.

J. LEAs may use funds to pay for at least one secondary school counselor, per school, per year for membership in the American School Counselor Association (ASCA) to facilitate accessing research and resources for effective Program implementation and effective student interventions and outcomes.

K. LEAs shall not use funds to supplant current or existing personnel or programs.

L. The USOE may use no more than two percent of the total Comprehensive Counseling and Guidance Program funding to provide SEOP/Plan for College and Career Readiness development and Program management.

R277-462-7. Variances, Accountability and Reporting.

A. New schools that are created from schools that have AdvancED accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. New LEA schools not meeting the requirements of R277-462-5A may receive Comprehensive Counseling and Guidance Program funding following two years of planning, training and Program implementation.

C. USOE Data Gathering

(1) The USOE shall gather data annually in October from LEAs regarding the number and assignments of school counselors.

(2) The USOE shall use the data to determine LEA compliance with this rule, including required ratios.

D. The USOE shall monitor the Program statewide and prepare an annual report for the Legislature and the Board including data and compliance information.

E. LEAs shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program upon request.

KEY: public education, counselors
August 7, 2014 **Art X Sec 3**
Notice of Continuation May 23, 2019 **53E-2-304(2)(b)**

R277. Education, Administration.
R277-480. Charter School Revolving Account.
R277-480-1. Definitions.

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

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53G-5-305, by the Board under Section 53G-5-304, and by boards of trustees of higher education institutions under Section 53G-5-306.

C. "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:

(1) meet school building construction and renovation needs; and

(2) pay for expenses related to the start up of a new charter school or the expansion of an existing charter schools.

D. "Charter School Revolving Account Committee" means the committee established by the Board under Subsection 53F-9-203(6).

E. "Superintendent" means the State Superintendent of Public Instruction as designated under 53E-3-301.

F. "Urgent facility need," as provided for in Subsection 53F-9-203(5), means an unexpected exigency that affects the health and safety of students such as:

(1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or

(2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health, or public school laws or Board rules.

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

R277-480-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53F-9-203(2)(b) which requires the Board to administer the Charter School Revolving Account, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures for administering the Charter School Revolving Account to determine membership of the Charter School Revolving Account Committee, and to determine loan amounts and loan repayment conditions.

R277-480-3. Charter School Revolving Account Committee.

A. The Board shall establish a Charter School Revolving Account Committee consistent with Subsection 53F-9-203(6).

B. The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of Subsection 53F-9-203(6)(b) for appointment by the Board consistent with timelines established by the Board.

C. The Board shall annually accept nominations of individuals provided by the State Charter School Board who meet the qualifications of Subsection 53F-9-203(6)(b).

D. The Board may only select Charter School Revolving Account Committee members who satisfy conditions of Subsection 53F-9-203(6).

E. Charter School Revolving Account Committee members appointed by the Board after May 1, 2010 shall be appointed for two year terms.

F. The USOE Charter School Director or designee shall be a non-voting Charter School Revolving Account Committee member.

R277-480-4. Charter School Revolving Account Application and Conditions.

A. The Charter School Revolving Account Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Section 53F-9-203, including urgent facility need criteria.

B. The Charter School Revolving Account Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful, including considerations of Subsection 53F-9-203(5), in making final recommendations to the Superintendent, the State Charter School Board and the Board.

C. The Charter School Revolving Account Committee shall accept applications for loans on an ongoing basis, subject to eligibility criteria and availability of funds.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53F-9-203 and the purpose of the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

D. The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53F-9-203. Terms shall include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to $150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to $75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53F-9-203 shall not exceed:

(a) $1,000 per pupil based on the most recent October 1 enrollment count for operational schools; or

(b) $1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) $300,000 of the total of all current loan awards by the Board to a charter school board.

R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.

A. The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

B. The submission of intentionally false, incomplete or

inaccurate information from a loan applicant may result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

C. The Board staff and State Charter Board staff shall review recommendations from the Charter School Revolving Account Committee.

D. Final recommendations from the Charter School Revolving Account Committee shall be submitted to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

E. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Charter School Revolving Account Committee.

F. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

KEY: charter schools, revolving account

August 7, 2014	**Art X, Sec 3**
Notice of Continuation May 13, 2019	**53F-9-203(2)(b)**
	53E-3-401(4)

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. 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) Section 53E-6-201, which gives the Board power to issue licenses.

(2) This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

(3) This rule also provides a process and criteria for educators whose licenses have lapsed to return to the teaching profession.

R277-502-2. Definitions.

(1) "Accredited school" means a public or private school that:

(a) meets standards essential for the operation of a quality school program; and

(b) has received formal approval through a regional accrediting association.

(2) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators including information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

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

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

(4) "Letter of Authorization" means a designation given to an individual employed by an LEA for one year authorizing the individual to teach in a public school, such as:

(a) an out-of-state candidate; or

(b) an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license; or

(c) an individual who has not completed necessary endorsement requirements.

(5)(a) "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following:

(i) Early Childhood (k-3);

(ii) Elementary (k-6);

(iii) Elementary (1-8);

(iv) Middle (5-9), only for licenses issued before 1988;

(v) Secondary (6-12);

(vi) Administrative/Supervisory (k-12);

(vii) Career and Technical Education;

(viii) School Counselor;

(ix) School Psychologist;

(x) School Social Worker;

(xi) Special Education (k-12);

(xii) Deaf Education

(xiii) Preschool Special Education (Birth-Age 5);

(xiv) Communication Disorders;

(xv) Speech-Language Pathologist; and

(xvi) Speech-Language Technician.

(b) License areas of concentration may also bear endorsements relating to subjects or specific assignments.

(6)(a) "License endorsement" or "endorsement" means a specialty field or area earned through completing required course work established by the Superintendent or through demonstrated competency approved by the Superintendent.

(b) An endorsement shall be listed on a professional educator license indicating the specific qualifications of the holder.

(7) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).

(8) "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor, consistent with R277-500, which details appropriate professional learning activities for the purpose of renewing the educator's license.

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

(10) "State Approved Endorsement Program" or "SAEP" means a plan developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator consistent with Section R277-520-11.

R277-502-3. Program Approval and Requirements.

(1) The Superintendent shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this Rule R277-502 and the Standards for Program Approval established in:

(a) Rule R277-504;

(b) Rule R277-505; or

(c) Rule R277-506.

(2) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of program approval.

(3) To be approved for license recommendation an educator preparation program shall:

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

(i) have the program's primary headquarters located in Utah; and

(ii) be licensed to do business in Utah through the Utah Department of Commerce;

(b) include requirements designed to ensure that the educator meets the Utah Effective Educator Standards established in R277-530;

(c) include requirements, if the program offers content endorsement preparation, that are, at minimum, equivalent to the competency requirements for the endorsement as established by the Superintendent;

(d) establish entry requirements, approved by the Superintendent, that are designed to ensure that only high quality individuals enter the licensure program, which include measures of:

(i) previous academic success;

(ii) disposition for employment in an educational setting; and

(iii) basic skills in reading, writing, and mathematics; and

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

(4) The Superintendent shall work with Board-approved educator preparation programs, LEAs, and other stakeholders to establish standards for pedagogical performance

assessments that will be required under Rule R277-301 no later than January 1, 2019.

(5) The Superintendent shall lead the approval review for any Board-approved educator preparation program seeking to maintain or receive program approval.

(6) The Superintendent shall be responsible for:

(a) observing and monitoring the approval review process;

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

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

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

(7) After completion of the approval review site visit, a Board-approved educator preparation program, working with the Superintendent, shall prepare and submit a program approval request for consideration by the Board that includes:

(a) a program summary;

(b) approval review findings;

(c) program areas of distinction;

(d) program enrollment; and

(e) program goals and direction.

(8) If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled approval review visit.

(9)(a) Notwithstanding Subsection 8, the Superintendent may place a program on probation for:

(i) failure to meet program requirements detailed in applicable Board rules; and

(ii) submission of inadequate or incomplete information in a report required under this R277-502.

(b) The Board may revoke its approval of a probationary program that fails to meet probationary requirements with at least one year's notice.

(10) If a new educator preparation program seeks Board approval or a previously Board-approved educator preparation program seeks approval for additional license area preparation and endorsements, the program shall submit an application to the Superintendent including:

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

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

(c) detailed information showing how the program will ensure that the educator satisfies all standards in the Utah Effective Educator Standards established in Rule R277-530 and Professional Educator Standards established in Rule R277-515;

(d) information about program timelines and anticipated enrollment.

(11) The Board shall approve or deny applications for new educator preparation programs.

(12)(a) The Superintendent shall review and approve or deny applications from previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements.

(b) The Superintendent may grant preliminary approval pending Utah State Board of Regents approval of a new program if the program is within a public institution.

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

(14) A Board-approved educator preparation program shall submit an annual report to the Superintendent by July 1 of each year, which shall include the following:

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

(b) information explaining any significant changes to program requirements or content;

(c) the program's response to areas of concern or areas of focus identified by the Superintendent; and

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

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

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

(17)(a) If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program.

(b) The preparation program officials shall determine whether any content or pedagogy requirement previously met meets current program standards and if additional requirements are necessary to recommend licensure.

(c) The individual shall complete all requirements established by program officials before receiving a license recommendation from the program.

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

(1)(a) The Superintendent shall recommend an individual to the Board for a Level 1 license if the individual:

(i) is recommended by a Board-approved educator preparation program or approved alternative preparation program; or

(ii) possesses a valid professional educator license from another state.

(b) An LEA and Board-approved educator preparation program shall cooperate in preparing candidates for a Level 1 license and may use joint resources to assist candidates in preparation for licensing.

(c) A Board-approved educator preparation program may only issue a recommendation if the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) A Level 1 license is valid for three years unless suspended or revoked for cause by the Board.

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

(4) If an educator has taught for three years in a K-12 public education system in Utah, the Superintendent may only recommend renewal of a Level 1 license if:

(a) the employing LEA has requested a one year extension consistent with Section R277-522-4; or

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

(5) The Superintendent shall recommend a Level 1 licensee to the Board for a Level 2 license upon:

(a) satisfaction of all Board requirements for the Level 2 license; and

(b) the recommendation of the employing LEA.

(6) An LEA shall make a recommendation under Subsection (5)(b), prior to the expiration of the educator's Level 1 license and following:

(a) the completion of three years of successful, professional growth and educator experience;

(b) satisfaction of all requirements of Rule R277-522; and

(c) any additional requirements imposed by the employing LEA.

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

(8) A Level 2 license may be renewed for successive five year periods consistent with Rule R277-500.

(9) The Superintendent shall recommend a Level 2 licensee to the Board for a Level 3 license who:

(a) has current National Board Certification;

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

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

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

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

(12) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.

(13)(a) All licenses expire on June 30 of the year of expiration and may be renewed any time after January of the same year.

(b) Responsibility for license renewal rests solely with the licensee.

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

(1) Unless excepted under rules of the Board, to be employed in a public school in a capacity covered by a license area of concentration set forth in Subsection R277-502-2(6)(a), a person shall hold a valid license issued by the Board in the respective license area of concentration.

(2) An educator who is licensed and holds the appropriate license area of concentration but who is working out of the educator's endorsement area, shall:

(a) submit an SAEP to complete the requirements of an endorsement to the Superintendent; or

(b) request, along with the educator's employing LEA, a letter of authorization from the Board if the educator has not completed requirements for an area of concentration or endorsement.

(3)(a) A letter of authorization issued under Subsection (2)(b) is valid for one year.

(b) An educator may receive no more than three Letters of Authorization throughout the educator's employment in Utah schools.

(c) The Superintendent may recommend an exception to the limitation in Subsection (3)(b) on a case by case basis following specific approval of the request by the educator's employing LEA governing board.

(d) A letters of authorization approved prior to the 2000-2001 school year shall not be counted towards the limit in Subsection (3)(b).

(e) If an educator's letter of authorization expires before the individual is approved for licensing, the educator falls into under-qualified status.

(4) A licensed educator may receive an endorsement to indicate qualification in a subject or content area.

(a) An LEA shall recognize a STEM endorsement as a minimum of 16 semester hours of university credit toward lane change on the LEA's salary schedule.

(b) The Superintendent shall determine the courses and experiences necessary for a STEM endorsement.

(c) The Superintendent shall determine which content area endorsements qualify as STEM endorsements.

(5) An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

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

(a) Completion of a criminal background check including review of any criminal offenses and clearance in accordance with Rule R277-214;

(b) Employment by an LEA;

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

(i) previous successful public school teaching experience;

(ii) formal educational preparation;

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

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

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

(vi) completion of additional necessary professional development for the educator.

(d) Filing of the professional learning plan within 30 days of hire;

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

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

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

(2) A returning educator is eligible for renewal of an educator license following completion of a professional learning plan notwithstanding the license renewal point requirements of Section R277-500-3.

(3)(a) A returning educator who previously held a Level 2 or Level 3 license under this rule shall receive a Level 1 license during the first year of employment following renewal of an expired license.

(b) Upon completion of the requirements listed in Subsection (1) and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

(4) A returning educator who taught less than three consecutive years in a public or accredited private school shall complete the requirements of Rule R277-522 before being recommended by an LEA to move from a Level 1 to Level 2 license.

R277-502-7. Professional Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.

(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah

license under this rule and Rule R277-503.

(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the assessment requirements of Rule R277-503.

(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of Rules R277-503 and R277-522.

(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies for specific license areas or endorsements from an applicant that are utilized by licensing jurisdictions outside of Utah and reasonably equivalent to Utah competencies.

(5) Individuals with 4 or more years of successful experience in a public or accredited private school under a standard license issued by a licensing jurisdiction outside of Utah shall be considered to have met both the content knowledge and pedagogical assessment requirements for a Utah license under this rule, Rule R277-503, and Rule R277-522.

KEY: professional competency, educator licensing

May 8, 2018	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-6-201**
	53E-3-401

R277. Education, Administration.
R277-552. Charter School Timelines and Approval Processes.
R277-552-1. 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 adopt rules in accordance with its responsibilities;

(c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;

(d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;

(e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;

(f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds; and

(g) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that a charter school authorizer is required to apply.

(2) The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

R277-552-2. Charter School Authorization Process.

(1) An individual or non-profit organization as described in Subsection 53G-5-302(2)(b) may apply to open a charter school from any statutorily approved authorizer.

(2) An authorizer shall submit a process to the Board for approval of:

(a) a new charter school;

(b) a charter school expansion;

(c) a replication school; or

(d) a satellite school.

(3) A new authorizer shall submit a new charter school application process to the Board for approval at least six months prior to accepting applications for a new charter school.

(4)(a) The Board shall approve or deny an authorizer's application process within 65 days of receipt of the proposed process from an authorizer.

(b) If the Board denies an application process, the Superintendent shall provide a written explanation of the reasons for the denial to the applicant within 45 days.

(c) If an authorizer's application process is denied, the authorizer may submit a revised application process for approval at any time.

(5) An existing authorizer may not authorize a new charter school for the 2021-22 school year and beyond until the Board approves the authorizer's application process.

(6) An authorizer shall have an application and charter agreement, which shall include all elements required by Title 53G, Chapter 5, Part 3, Charter School Authorization.

(7) An authorizer shall maintain the official charter agreement, which shall presumptively be the final, and complete agreement between a school and the school's authorizer.

(8) An authorizer's review process for a new charter school shall include:

(a) a plan for pre-operational and other trainings;

(b) an evaluation of the school's governing board, including:

(i) a review of the resumes of and background information of proposed governing board members; and

(ii) a capacity interview of the proposed governing board;

(c) an evaluation of the school's financial viability, including:

(i) a market analysis;

(ii) anticipated enrollment; and

(iii) anticipated and break even budgets;

(d) an evaluation of the school's academic program and academic standards by which the authorizer will hold the school accountable; and

(e) an evaluation of the school's proposed pre-operational plan, including implementation of:

(i) required policies;

(ii) student data systems;

(iii) reporting; and

(iv) financial management.

(9) An authorizer review process shall include contacting the school district in which a proposed charter school will be located and consideration of any feedback provided by the district.

(10) An authorizer shall design its approval process so that the authorizer notifies the Superintendent of an authorizer approval of a request identified in Subsection (2) no later than October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

R277-552-3. Timelines - Charter School Starting Date and Facilities.

(1) A charter school may receive state start-up funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

(2) Prior to receiving state start-up funds an authorizer shall certify in writing to the State Charter School Board that a charter school has:

(a) completed all financial identifying documents;

(b) completed background checks for each governing board member; and

(c) executed a signed charter agreement, which includes academic goals.

(3) Prior to an LEA receiving state start-up funds, the State Charter School Board shall require the LEA to submit documentation supporting the information required in Subsections (2)(a) and (c) to the Superintendent.

(4) A charter school may receive state funds, including minimum school program funds, if the charter school authorizer certifies in writing to the Superintendent by June 30 prior to the school's first operational year that:

(a) the charter school meets the requirements of Subsection (2);

(b) the charter school's governing board has adopted all policies required by statute or board rule, including a draft special education policies and procedures manual;

(c) the charter school's governing board has adopted an annual calendar in an open meeting and has submitted the calendar to the Superintendent;

(d) the authorizer has received the charter school's facility contract as required by Subsection 53G-5-404(9);

(e) the charter school has met the requirements of Subsections (5) and (6) and that the school's building is on track to be completed prior to occupancy;

(f)(i) the charter school has hired an executive director and a business administrator; or

(ii)(A) the charter school governing board has designated an executive director or business administrator employed by a third party; and

(B) the charter school governing board has established policies regarding the charter school's supervision of the charter school's third-party contractors;

(g) the charter school's enrollment is on track to be sufficient to meet the school's financial obligations and implement the charter school agreement;

(h) the charter school has an approved student data system that has successfully communicated with UTREx, including meeting the compatibility requirements of Subsection R277-484-5(3); and

(i) the charter school has a functional accounting system.

(5) An authorizer shall:

(a) create a process to verify the requirements in Subsection (4);

(b) maintain documentation of Subsection (5)(a); and

(c) provide the documentation described in Subsection (5)(b) to the Superintendent upon request.

(6) A charter school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

(7) A charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277- 471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

(8) If a charter school fails to meet the requirements of this section within 36 months of approval, the approval of the charter school shall expire.

R277-552-4. Charter Amendment Requests.

(1) An authorizer shall have a policy establishing a process for consideration of proposed amendments to a school's charter agreement.

(2) An authorizer's timeline for consideration of an amendment to a charter agreement may not conflict with any funding deadline established in Board rule.

R277-552-5. Charter School Expansion Requests.

(1) A charter school may request approval for an expansion if:

(a) the charter school satisfies the requirements of federal and state law, regulations, rule, and the charter agreement; and

(b)(i) the charter school's charter agreement provides for an expansion consistent with the request; or

(ii) the charter school governing board has submitted a formal amendment request to the charter school authorizer consistent with the charter school authorizer's requirements.

(2) If the charter school authorizer approves a charter school expansion, the expansion shall be approved before October 1 of the state fiscal year prior to the school's intended expansion date.

(3) A charter school authorizer that authorizes an expansion of the authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion date.

(4) When considering whether to approve a charter school's request for an expansion, an authorizer shall consider the following:

(a) the amount of time the charter school has operated successfully meeting the terms of its charter agreement;

(b) two years of academic performance data of students at the charter school, including whether the charter school is performing at or above:

(i) the academic goals established in the charter school's charter agreement; and

(ii) the average academic performance of other district and charter schools in the area, or for schools targeting specific populations, schools with similar demographics;

(c) the financial position of the charter school, as evidenced by the charter school's financial records, including the charter school's:

(i) most recent annual financial report (AFR);

(ii) annual program report (APR); and

(iii) audited financial statement;

(d) whether the charter school has a waiting list for enrollment;

(e) adequacy of the charter school's facility;

(f) any student safety issues; and

(g) ability to meet state and federal reporting requirements, including whether the charter school has regularly met Board reporting deadlines.

(5) A charter school requesting an expansion shall provide the information described in Subsection (4) to the authorizer with the charter school's request for expansion.

R277-552-6. Requests for a New Replication or Satellite School for an Approved Charter School.

(1) A charter school and all of the charter school's replication or satellite schools are a single LEA for purposes of public school funding and reporting.

(2) An existing charter school may submit a request to the charter school's authorizer for a replication or satellite charter school if:

(a) the charter school satisfies requirements of federal and state law, regulations, and rule;

(b) the charter school has operated successfully for at least three years meeting the terms of its charter agreement;

(c) the students at the charter school are performing on standardized assessments at or above the academic goals in the charter agreement, or, if there are no such goals in the charter agreement, are performing at or above surrounding schools;

(d) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the replication or satellite charter school;

(e) the charter school provides any additional information or documentation requested by the charter school authorizer; and

(f) the charter school is in good standing with its authorizer.

(3) As part of the application process, the authorizer shall review the charter school's:

(a) educational services, assessment, and curriculum;

(b) governing board's capacity to manage multiple campuses; and

(c) the school's financial viability.

(4) A replication or satellite charter school that will receive School LAND Trust funds shall have a charter trust land council and satisfy all requirements for charter trust land councils consistent with Rule R277-477.

(5) A replication or satellite charter school may receive state funding if the authorizer approves the replication or satellite charter school by October 1 of the state fiscal year prior to the year the school intends to serve students.

(6) If a replication or satellite charter school does not open within 36 months of approval, the approval shall expire.

(7) A charter school authorizer that authorizes a replication or satellite charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion date.

R277-552-7. Procedures and Timelines to Change Charter

School Authorizers.

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed transfer.

(3) The charter school authorizer transfer application shall include:

(a) current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the following:

(i) most recent annual financial report (AFR);

(ii) annual project report (APR); and

(iii) audited financial statement;

(c) test scores, including all state required assessments;

(d) current employees and assignments;

(e) board minutes for the most recent 12 months; and

(f) affidavits, signed by all board members certifying:

(i) the charter school's compliance with all state and federal laws and regulations;

(ii) all information on the transfer application is complete and accurate;

(iii) the charter school is current with all charter school governing board policies;

(iv) the charter school is operating consistent with the charter school's charter agreement; and

(v) there are no outstanding lawsuits, judgments, or liens against the charter school.

(4) The current authorizer of a charter school seeking to transfer charter school authorizers shall submit a position statement to the new charter school authorizer about:

(a) the charter school's status;

(b) compliance with the charter school authorizer requirements; and

(c) unresolved concerns.

(5) A new charter school authorizer shall review an application for transferring a charter school authorizer for acceptance within 60 days of submission of a complete application, including all required documentation.

(6) If an authorizer accepts the transfer of a new charter school, the new authorizer shall notify the Superintendent within 30 days.

(7) Prior to accepting a charter school from another authorizer, a new charter authorizer shall request and consider information from the Board and current authorizer of the charter school's financial and academic performance.

(8) The Superintendent and current authorizer shall provide the information described in Subsection (7) to a new charter authorizer within 30 days of request described in Subsection (7).

KEY: training, timelines, expansion, satellite

May 23, 2019

Art X Sec 3
53E-3-401
53G-5-205
53F-2-702
53G-6-503

R277. Education, Administration.
R277-700. The Elementary and Secondary School General Core.
R277-700-1. 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;

(c) Section 53E-3-501, which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements;

(d) Section 53E-4-202, which directs:

(i) the Board to establish Core Standards in consultation with LEA boards and superintendents; and

(ii) LEA boards to adopt local curriculum and to design programs to help students master the General Core;

(e) Title 53E, Chapter 4, Part 2, Career and College Readiness Mathematics Competency, which directs the Board to establish college and career mathematics competency standards; and

(f) Section 53E-4-205, which requires the Board to provide rules related to a basic civics test.

(2) The purpose of this rule is to specify the minimum Core Standards and General Core requirements for the public schools, and to establish responsibility for mastery of Core Standard requirements.

R277-700-2. Definitions.

For purposes of this rule:

(1)(a) "Applied course" means a public school course or class that applies the concepts of a Core subject.

(b) "Applied course" includes a course offered through Career and Technical Education or through other areas of the curriculum.

(2) "Arts" means the visual arts, music, dance, theatre, and media arts.

(3) "Assessment" means a summative computer adaptive assessment for:

(a) English language arts grades 3 through 11;

(b) mathematics grades 3 through 8, and Secondary I, II, and III; or

(c) science grades 4 through 8, earth science, biology, physics and chemistry.

(4) "Career and Technical Education (CTE)" means an organized educational program or course which directly or indirectly prepares students for employment, or for additional preparation leading to employment, in an occupation, where entry requirements generally do not require a baccalaureate or advanced degree.

(5) "Core Standard" means a statement of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course.

(6) "Core subject" means a course for which there is a declared set of Core Standards as approved by the Board.

(7) "Elementary school" for purposes of this rule means a school that serves grades K-6 in whatever kind of school the grade levels exist.

(8) "General Core" means the courses, content, instructional elements, materials, resources and pedagogy that are used to teach the Core Standards, including the ideas, knowledge, practice and skills that support the Core Standards.

(9) "High school" for purposes of this rule means a school that serves grades 9-12 in whatever kind of school the grade levels exist.

(10) "LEA" or "local education agency" includes the Utah Schools for the Deaf and the Blind.

(11) "Middle school" for purposes of this rule means a school that serves grades 7-8 in whatever kind of school the grade levels exist.

(12) "Junior High school" means a school that serves grades 7-9 in whatever kind of school the grade levels exist.

(13) "Proficiency in keyboarding" means a student's ability to key by touch.

(14) "Summative adaptive assessment" means an assessment that:

(a) is administered upon completion of instruction to assess a student's achievement;

(b) is administered online under the direct supervision of a licensed educator;

(c) is designed to identify student achievement on the Core Standards for the respective grade and course; and

(d) measures the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

R277-700-3. General Core and Core Standards.

(1) The Board establishes minimum course description standards for each course in the required General Core.

(2)(a) The Superintendent shall develop, in cooperation with LEAs, course descriptions for required and elective courses.

(b) The Superintendent shall provide parents and the general public an opportunity to participate in the development process of the course descriptions described in Subsection (2)(a).

(3)(a) The Superintendent shall ensure that the courses described in Subsection (2):

(i) contain mastery criteria for the courses; and

(ii) stress mastery of the course material, Core Standards, and life skills consistent with the General Core.

(b) The Superintendent shall place a greater emphasis on a student's mastery of course material rather than completion of predetermined time allotments for courses.

(4) An LEA board shall administer the General Core and comply with student assessment procedures consistent with state law.

R277-700-4. Elementary Education Requirements.

(1) The Core Standards and a General Core for elementary school students in grades K-6 are described in this section.

(2) The following are the Elementary School Education Core Subject Requirements:

(a) English Language Arts;

(b) Mathematics;

(c) Science;

(d) Social Studies;

(e) Arts:

(i) Visual Arts;

(ii) Music;

(iii) Dance; or

(iv) Theatre;

(f) Health Education;

(g) Physical Education;

(h) Educational Technology, including keyboarding; and

(i) Library Media.

(3) An LEA board shall provide access to the General Core to all students within the LEA.

(4) An LEA board is responsible for student mastery of the Core Standards.

(5) An LEA shall conduct informal assessments on a

regular basis to ensure continual student progress.

(6) An LEA shall assess students for proficiency in keyboarding by grade 5 and report school level results to the Superintendent.

(7) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

(a) reading;

(b) language arts;

(c) mathematics;

(d) science; and

(e) effectiveness of written expression in grades five and eight.

(8) An LEA shall provide remediation to elementary students who do not achieve mastery of the subjects described in this section.

R277-700-5. Middle School Education Requirements.

(1) The Core Standards and a General Core for middle school students are described in this section.

(2) A student in grades 7-8 is required to complete the courses described in Subsection (3) to be properly prepared for instruction in grades 9-12.

(3) The following are the Grades 7-8 General Core Requirements:

(a) Grade 7 Language Arts;

(b) Grade 8 Language Arts;

(c) Grade 7 Mathematics;

(d) Grade 8 Mathematics;

(e) Grade 7 Integrated Science;

(f) Grade 8 Integrated Science;

(g) United States History;

(h) Utah History; and

(i) at least one course in each of the following in grades 7 or 8:

(A) Health Education;

(B) College and Career Awareness;

(C) Digital Literacy;

(D) the Arts; and

(E) Physical Education.

(4) An LEA shall use evidence-based best practices, technology, and other instructional media in middle school curricula to increase the relevance and quality of instruction.

(5) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

(a) reading;

(b) language arts;

(c) mathematics; and

(d) science.

(6) At the discretion of the LEA board, an LEA board may:

(a) offer additional elective courses;

(b) require a student to complete additional courses; or

(c) set minimum credit requirements.

(7) Upon parental or student request, an LEA may, with parental consent, substitute a course requirement described in Subsection (3) with a course, extracurricular activity, or experience that is:

(a) similar to the course requirement; or

(b) consistent with the student's plan for college and career readiness.

(8)(a) An LEA shall establish a policy governing the substitution of a course requirement as described in Subsection (7).

(b) An LEA's policy described in Subsection (8)(a) shall include a process for a parent to appeal an LEA's denial of a request for a substitution described in Subsection (7) to the LEA board or the LEA board designee.

R277-700-6. High School Requirements.

(1) The General Core and Core Standards for students in grades 9-12 are described in this section.

(2) A student in grades 9-12 is required to earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.

(3) Through recording of credits in a student's transcripts for grades 9-12, in accordance with Subsections R277-726-5(9) and R277-726-5(10), for purposes of high school graduation, an LEA shall recognize high school credits earned prior to grade 9 through participation in the Statewide Online Education Program, provided that:

(a) the student has declared an intention to graduate early; and

(b) the high school courses are not used to replace middle school educational requirements.

(4) The General Core credit requirements from courses approved by the Board are described in Subsections (4) through (18).

(5) Language Arts (4.0 units of credit from the following):

(a) Grade 9 level (1.0 unit of credit);

(b) Grade 10 level (1.0 unit of credit);

(c) Grade 11 level (1.0 unit of credit); and

(d) Grade 12 level (1.0 Unit of credit) consisting of applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's Plan for College and Career Readiness:

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills;

(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts;

(iii) courses apply the fundamental concepts and skills of language arts;

(iv) courses provide developmentally appropriate content; and

(v) courses develop skills in reading, writing, listening, speaking, and presentation.

(6) Mathematics (3.0 units of credit) shall be met minimally through successful completion of a combination of the foundation or foundation honors courses, Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

(7)(a) A student may opt out of Secondary Mathematics III if the student's parent submits a written request to the school.

(b) If a student's parent requests an opt out described in Subsection (6)(a), the student is required to complete a third math credit from the Board-approved mathematics list.

(8) A 7th or 8th grade student may earn credit for a mathematics foundation course before 9th grade, consistent with the student's Plan for College and Career Readiness if:

(a) the student is identified as gifted in mathematics on at least two different Board-approved assessments;

(b) the student is enrolled at a middle school or junior high school and a high school;

(c) the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade; or

(d) the student takes the Board competency test in the summer prior to 9th grade and earns high school graduation credit for the course.

(9) A student who successfully completes a mathematics foundation course before 9th grade is required to earn 3.0 units of additional mathematics credit by:

(a) taking the other mathematics foundation courses

described in Subsection (5); and

(b) an additional course from the Board-approved mathematics list consistent with:

(i) the student's Plan for College and Career Readiness; and

(ii) the following criteria:

(A) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;

(B) courses provide instruction that lead to student understanding of the nature and disposition of mathematics;

(C) courses apply the fundamental concepts and skills of mathematics;

(D) courses provide developmentally appropriate content; and

(E) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

(10) A student who successfully completes a Calculus course with a "C" grade or higher has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

(11) Science (3.0 units of credit):

(a) shall be met minimally through successful completion of 2.0 units of credit from two of the following five science foundation areas:

(i) Earth Science (1.0 units of credit);

(A) Earth Science;

(B) Advanced Placement Environmental Science; or

(C) International Baccalaureate Environmental Systems;

(ii) Biological Science (1.0 units of credit);

(A) Biology;

(B) Human Biology;

(C) Biology: Agricultural Science and Technology;

(D) Advanced Placement Biology;

(E) International Baccalaureate Biology; or

(F) Biology with Lab Concurrent Enrollment;

(iii) Chemistry (1.0 units of credit);

(A) Chemistry;

(B) Advanced Placement Chemistry;

(C) International Baccalaureate Chemistry; or

(D) Chemistry with Lab Concurrent Enrollment;

(iv) Physics (1.0 units of credit);

(A) Physics;

(B) Physics with Technology;

(C) Advanced Placement Physics (1, 2, C: Electricity and Magnetism, or C: Mechanics);

(D) International Baccalaureate Physics; or

(E) Physics with Lab Concurrent Enrollment; or

(v) Computer Science (1.0 units of credit):

(A) Advanced Placement Computer Science;

(B) Computer Science Principles; or

(C) Computer Programming II; and

(b) one additional unit of credit from:

(i) the foundation courses described in Subsection(10)(a); or

(ii) the applied or advanced science list:

(A) determined by the LEA board; and

(B) approved by the Board using the following criteria and consistent with the student's Plan for College and Career Readiness:

(i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills;

(ii) courses provide instruction that leads to student understanding of the nature and disposition of science;

(iii) courses apply the fundamental concepts and skills of science;

(iv) courses provide developmentally appropriate content;

(v) courses include the areas of physical, natural, or applied sciences; and

(vi) courses develop students' skills in scientific inquiry.

(12) Social Studies (3.0 units of credit) shall be met minimally through successful completion of:

(a) 2.5 units of credit from the following courses:

(i) Geography for Life (0.5 units of credit);

(ii) World Civilizations (0.5 units of credit);

(iii) U.S. History (1.0 units of credit); and

(iv) U.S. Government and Citizenship (0.5 units of credit);

(b) Social Studies (0.5 units of credit per LEA discretion); and

(c) a basic civics test or alternate assessment described in R277-700-8.

(13) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

(c) Dance; or

(d) Theatre.

(14) Physical and Health Education (2.0 units of credit from any of the following):

(a) Health (0.5 units of credit);

(b) Participation Skills (0.5 units of credit);

(c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit); or

(e) team sport/athletic participation (maximum of 1.0 units of credit with school approval).

(15) Career and Technical Education (1.0 units of credit from any of the following):

(a) Agriculture;

(b) Business;

(c) Family and Consumer Sciences;

(d) Health Science and Technology;

(e) Information Technology;

(f) Marketing;

(g) Technology and Engineering Education; or

(h) Trade and Technical Education.

(16) Digital Studies (0.5 units of credit).

(17) Library Media Skills (integrated into the subject areas).

(18) General Financial Literacy (0.5 units of credit).

(19) Electives (5.5 units of credit).

(20) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following subjects:

(a) reading;

(b) language arts through grade 11;

(c) mathematics as defined in Subsection (5); and

(d) science as defined in Subsection (10).

(21) An LEA board may require a student to earn credits for graduation that exceed the minimum Board requirements described in this rule.

(22) An LEA board may establish and offer additional elective course offerings at the discretion of the LEA board.

(23)(a) An LEA may modify a student's graduation requirements to meet the unique educational needs of a student if:

(i) the student has a disability; and

(ii) the modifications to the student's graduation requirements are made through the student's individual IEP.

(b) An LEA shall document the nature and extent of a modification, substitution, or exemption made to a student's graduation requirements described in Subsection (22)(a) in the student's IEP.

(24) The Superintendent shall provide a list of approved

courses meeting the requirements of this rule.

(25) An LEA may modify graduation requirements for an individual student to achieve an appropriate route to student success if the modification:

(a) is consistent with:

(i) the student's IEP; or

(ii) SEOP/Plan for College and Career Readiness;

(b) is maintained in the student's file;

(c) includes the parent's signature; and

(d) maintains the integrity and rigor expected for high school graduation, as determined by the Board.

R277-700-7. Student Mastery and Assessment of Core Standards.

(1) An LEA shall ensure students master the Core Standards at all levels.

(2) An LEA shall provide remediation for secondary students who do not achieve mastery in accordance with Section 53G-9-803.

(3) An LEA shall provide remedial assistance to students who are found to be deficient in basic skills through a statewide assessment in accordance with Subsection 53E-5-206(1).

(4) If a parent objects to a portion of a course or to a course in its entirety under Section 53G-10-205 and R277-105, the parent shall be responsible for the student's mastery of Core Standards to the satisfaction of the school prior to the student's promotion to the next course or grade level.

(5)(a) A student with a disability served by a special education program is required to demonstrate mastery of the Core Standards.

(b) If a student's disability precludes the student from successfully mastering the Core Standards, the student's IEP team, on a case-by-case basis, may provide the student an accommodation for, or modify the mastery demonstration to accommodate, the student's disability.

(6) A student may demonstrate competency to satisfy course requirements consistent with R277-705-3.

(7) LEAs are ultimately responsible for and shall comply with all assessment procedures, policies and ethics as described in R277-404.

R277-700-8. Civics Education Initiative.

(1) For purposes of this section:

(a) "Student" means:

(i) a public school student who graduates on or after January 1, 2016; or

(ii) a student enrolled in an adult education program who receives an adult education secondary diploma on or after January 1, 2016.

(b) "Basic civics test" means the same as that term is defined in Subsection 53E-4-205(1)(b).

(2) Except as provided in Subsection (3), an LEA shall:

(a) administer a basic civics test in accordance with the requirements of Section 53E-4-205; and

(b) require a student to pass the basic civics test as a condition of receiving:

(i) a high school diploma; or

(ii) an adult education secondary diploma.

(3) An LEA may require a student to pass an alternate assessment if:

(a)(i) the student has a disability; and

(ii) the alternate assessment is consistent with the student's IEP; or

(b) the student is within six months of intended graduation.

(4) Except as provided in Subsection (5), the alternate assessment shall be given:

(a) in the same manner as an exam given to an unnaturalized citizen; and

(b) in accordance with 8 C.F.R. Sec. 312.2.

(5) An LEA may modify the manner of the administration of an alternate assessment for a student with a disability in accordance with the student's IEP.

(6) If a student passes a basics civics test or an alternate assessment described in this section, an LEA shall report to the Superintendent that the student passed the basic civics test or alternate assessment.

(7) If a student who passes a basic civics test or an alternate assessment transfers to another LEA, the LEA may not require the student to re-take the basic civics test or alternate assessment.

R277-700-9. College and Career Readiness Mathematics Competency.

(1) For purposes of this section, "senior student with a special circumstance" means a student who:

(a) is pursuing a college degree after graduation; and

(b) has not met one of criteria described in Subsection (2)(a) before the beginning of the student's senior year of high school.

(2) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a student pursuing a college degree after graduation shall:

(a) receive one of the following:

(i) a score of 3 or higher on an Advanced Placement (AP) calculus AB or BC exam;

(ii) a score of 3 or higher on an Advanced Placement (AP) statistics exam;

(iii) a score of 5 or higher on an International Baccalaureate (IB) higher level math exam;

(iv) a score of 50 or higher on a College Level Exam Program (CLEP) pre-calculus or calculus exam;

(v) a score of 26 or higher on the mathematics portion of the American College Test (ACT) exam;

(vi) a score of 640 or higher on the mathematics portion of the Scholastic Aptitude Test (SAT) exam; or

(vii) a "C" grade in a concurrent enrollment mathematics course that satisfies a state system of higher education quantitative literacy requirement; or

(b) if the student is a senior student with a special circumstance, take a full year mathematics course during the student's senior year of high school.

(3) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a non-college and degree-seeking student shall complete appropriate math competencies for the student's career goals as described in the student's Plan for College and Career Readiness.

(4) An LEA may modify a student's college or career readiness mathematics competency requirement under this section if:

(a) the student has a disability; and

(b) the modification to the student's college or career readiness mathematics competency requirement is made through the student's IEP.

(5)(a) An LEA shall report annually to the LEA's board the number of students within the LEA who:

(i) meet the criteria described in Subsection (2)(a);

(ii) take a full year of mathematics as described in Subsection (2)(b);

(iii) meet appropriate math competencies as established in the students' career goals as described in Subsection (3); and

(iv) meet the college or career readiness mathematics competency requirement established in the students' IEP as described in Subsection (4).

(b) An LEA shall provide the information described in Subsection (5)(a) to the Superintendent by October 1 of each year.

KEY: graduation requirements, standards

May 23, 2019	**Art X Sec 3**
Notice of Continuation August 14, 2017	**53E-3-501(1)(b)**
	53E-4-202
	53E-33-401(4)

R277. Education, Administration.
R277-720. Reimbursement Program for Early Graduation from Competency-Based Education.
R277-720-1. 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;

(c) Subsection 53F-2-511(1)(c)(ii), which allows the Board to make rules to specify additional criteria for an LEA to be eligible for a competency-based education early graduation reimbursement; and

(d) Subsection 53F-2-511(6), which allows the Board to make rules for the administration of the Reimbursement Program for Early Graduation from Competency-Based Education.

R277-720-2. Definitions.

(1) "Advisory Committee" means the Competency-based Advisory Committee created in Section R277-712-3.

(2) "Eligible LEA" means an LEA that:

(a) has demonstrated to the Board that the LEA or, for a school district, a school within the LEA, provides and facilitates competency-based education that is based on the core principles described in Section 53F-5-502; and

(b) has an approved competency-based education program that includes:

(i) at least one outcome measure for each indicator level required by the Superintendent;

(ii) outcome measures that are disaggregated by student subgroups where possible; and

(iii) at least one outcome measure for student growth and proficiency.

(3) "Eligible student" means a student who:

(a) meets the requirements described in Subsection 53F-2-511(1)(d);

(b) has been flagged by an LEA as a competency-based education participant.

(4) "Program" means the Reimbursement Program for Early Graduation from Competency-Based Education described in Section 53F-2-511.

R277-720-3. Competency Based Education Designation.

(1) To receive a competency-based education designation, an eligible LEA shall:

(a) submit an application in the form prescribed by the Superintendent to the advisory committee;

(b) submit the application in Subsection (1)(a) no later than April 1st of the school year prior to the school year in which the LEA intends to seek reimbursement; and

(c) have an approved competency-based education plan pursuant to R277-712.

(2) The advisory committee shall review all applications and make recommendations to the Board based on the Board approved competency-based education core principals and measures described in R277-712.

(3) The Board shall approve or deny the recommendations made by the advisory committee.

(4) If approved, an eligible LEA's competency-based education designation shall last for the following three years, provided the school continues to operate on a competency-based model.

(5) An eligible LEA may not retroactively use an approved competency-based education designation for reimbursement of eligible students.

(6) If an eligible LEA does not have a current competency-based education designation, the eligible LEA may not use the approved competency-based education designation for reimbursement of eligible students in the school year in which the eligible LEA's application is approved.

R277-720-4. Early Graduation Reimbursement.

(1) An eligible LEA with a competency-based education designation may seek reimbursement for an eligible student beginning October 2021 for membership generated in the 2020-2021 school year.

(2) The reimbursement amount shall be calculated by the Superintendent in the following manner:

(a) the amount of weighted pupil unit lost due to early graduation for each eligible student shall be determined as described by Subsection 53F-2-511(5);

(b) the total amount of lost weighted pupil unit for each eligible student shall be used to establish an LEA aggregate total and a statewide aggregate total for all eligible students;

(c) if the statewide aggregate total is equal to or less than the total amount allocated for the program by the legislature, an eligible LEA shall be reimbursed the LEA aggregate total;

(d) if the statewide aggregate total exceeds the total amount allocated for the program by the legislature, an eligible LEA shall be reimbursed a prorated amount proportionate to the percentage that the LEA aggregate total is of the statewide aggregate total.

(3) An LEA shall not receive a reimbursement for an eligible student that exceeds the amount outlined in Subsection 53F-2-511(5)(a).

KEY: competency-based education, reimbursements, early graduation
May 23, 2019

Art X Sec 3
53E-3-401(4)
53F-2-511(1)(c)(ii)
53F-2-511(6)

R277. Education, Administration.
R277-726. Statewide Online Education Program.
R277-726-1. 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 53F-4-514, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;

(c) Section 53F-4-508, which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

(d) 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:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Statewide Online Education Program application provided by the Superintendent.

(b) Except as provided in Subsection 53F-4-508(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(4)(a) "Eligible student" means a student enrolled in grades 6-12 in a secondary environment in a course that:

(i) is offered by a public school; and

(ii) provides the student the opportunity to earn high school graduation credit.

(b) "Eligible student" does not include a student enrolled in an adult education program.

(5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).

(6)(a) "Executed CCA" means a CCA that has been signed by all parties as provided in Subsection 53F-4-508(3)(h) and received by the Superintendent.

(b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507.

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

(8) "Online course" means a course of instruction offered through the Statewide Online Education Program.

(9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2).

(10) "Online course provider" or "provider" means:

(a) a school district school;

(b) a charter school;

(c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or

(d) a program of an institution of higher education described in Subsection 53F-4-504(3).

(11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports the student to be in regular membership, and special education membership, if applicable.

(12) "Primary school of enrollment" means:

(a) a student's school of record within a primary LEA of enrollment; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(14) "Statewide assessment" means a test or assessment required under Rule R277-404.

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act.

(16) "Teacher of record" means the teacher who is employed by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3.

(17) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

(18) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

(19) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's plan for college and career readiness;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the

enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1) An eligible student may register for program credits consistent with Section 53F-4-503.

(2) An eligible student may exceed a full course load during a regular school year if:

(a) the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(3) In accordance with Section 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local Student Information System.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15).

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

(4) A primary school or LEA of enrollment shall provide the notice required under Subsection (3) concurrent with the high school course registration period designated by the LEA for the upcoming school year to facilitate enrollment as required by Section 53F-4-513.

(5) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

(6) A primary school of enrollment shall recognize credit earned by a participating secondary student through courses completed prior to grade 9 for purposes of high school graduation provided that:

(a) the student has in the student's records documentation of the student's intention to graduate early; and

(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-410.

(7) A primary school of enrollment shall determine fee waiver eligibility for participating public school students.

(8) A primary school of enrollment shall provide participating students access to sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.

(9) If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course completions will be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, high school graduation requirements, and post-secondary requirements.

(10) When a student satisfactorily completes an online semester or quarter course, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and credit for students participating prior to grade 9 to the student's grade 9 primary school of enrollment for recording grades and credit per Subsection R277-726-5(8) once a student completes grade 8.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 and Section 53F-4-514 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3)(d).

(b) Course load standards may differ based on subject matter.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53F-4-505 through 53F-4-507.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53F-4-505(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53F-4-415 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

(a) consistency with course standards;

(b) criminal background checks for provider employees;

(c) documentation of student enrollment and participation; and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

(a) Board procedures;

(b) Board timelines; and

(c) Sections 53F-4-505 through 53F-4-508.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee of any kind, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website;

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy all requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as otherwise provided in this Rule R277-726, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment.

(b) A provider is responsible for all due process procedures for student disciplinary actions in the provider's online program.

(c) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is suspended for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(10)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work.

(16) An LEA may participate in the program as a provider by offering a school or program to Utah secondary students in grades 6-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(17) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Rule R277-520;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-

407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and

(ii) Rule R277-487; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404; and

(f) shall not issue transcripts under the name of a third-party provider.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Section 53F-4-514 and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, and 53F-4-508.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, educator credentials, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

(21)(a) A provider contracting with a third-party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third-party provider to ensure:

(i) a third-party provider is complying with:

(A) federal law;

(B) state law; and

(C) Board rules;

(ii) curriculum provided by a third-party provider is aligned with the Board's core standards and rules;

(iii) supervision of third-party facilitation and instruction by an educator licensed in Utah:

(A) employed by the provider, and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

(22) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.

R277-726-8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with the student's primary school of enrollment.

(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.

(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).

(2)(a) If a student requests services related to an existing Section 504 accommodation, a provider shall:

(i) except as provided in Subsection (2)(b), review and implement the plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) working with a provider LEA representative, review or develop an IEP for the student within ten days of enrollment;

(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;

(iii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iv) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student requests an evaluation for eligibility to receive special education services:

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection (4)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and

(iv) claim the student in the resident school's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (4)(a)(i).

R277-726-9. Home and Private School Appropriation.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) 50% of the total appropriation for home school students; and

(b) 50% of the total appropriation for private school

students.

(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated.

(3) If home school or private school student funds remain by March 1, the Superintendent may release the funds for any pending enrollment requests.

R277-726-10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

KEY: statewide online education program

May 23, 2019	**Art X Sec 3**
Notice of Continuation December 15, 2015	**53A-15-1210**
	53A-15-1213
	53A-1-401

R277. Education, Administration.
R277-922. Digital Teaching and Learning Grant Program.
R277-922-1. 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) Section 53F-2-510, Digital Teaching and Learning Grant Program, which requires the Board to:

(i) establish a qualifying grant program; and

(ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.

(2) The purpose of this rule is to:

(a) establish an application and grant review committee and process;

(b) give direction to LEAs participating in the Digital Teaching and Learning Program.

R277-922-2. Definitions.

(1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:

(a) established by the Board as required in Section 53F-2-510; and

(b) required to perform the duties described in R277-922-5.

(2) "LEA plan" has the same meaning as that term is defined in Section 53F-2-510.

(3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in R277-922-3.

(4) "Program" has the same meaning as that term is defined in Section 53F-2-510.

(5) "Participating LEA" means an LEA that:

(a) has an LEA plan approved by the Board; and

(b) receives a grant under the program.

R277-922-3. Incorporation of Utah's Master Plan by Reference.

(1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:

(a) the application process for an LEA to receive a grant under the program; and

(b) a more detailed description of the requirements of an LEA plan.

(2) A copy of the Master Plan is located at:

(a) https://www.uen.org/digital-learning/downloads/Utah_Essential_Elements_Technology_Powered_Learning.pdf#a=; and

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

R277-922-4. LEA Planning Grants.

(1) An LEA may apply for a planning grant in lieu of preparing an LEA plan and receiving a Digital Teaching and Learning Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount of $5,000.

(3) In order to qualify for a planning grant, an LEA shall:

(a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and

(b) complete the readiness assessment required in Section 53F-2-510.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-922-8 for the subsequent school year.

(b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2) to the program.

R277-922-5. Digital Teaching and Learning Advisory Committee Duties.

(1) The advisory committee shall include the following individuals who will serve as non-voting chairs:

(a) the Deputy Superintendent of Instructional Services or designee; and

(b) the Director of the Utah Education and Telehealth Network or designee.

(2) In addition to the chairs described in Subsection (1), the Board shall appoint five members to the advisory committee as follows:

(a) the Digital Teaching and Learning Coordinator;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning; and

(d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN).

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-8;

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-922-6. Board Approval or Denial of LEA Plans.

(1) The Board will either approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

R277-922-7. Pre-LEA Plan Submission Requirements.

(1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:

(a) have an LEA representative participate in a pre-grant submission training conducted by the Superintendent;

(b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:

(i) a representative group of school leadership from schools participating in the program;

(ii) the school district superintendent or charter school executive director;

(iii) the LEA's technology director; and

(iv) the LEA's curriculum director; and

(c) complete the readiness assessment required in Section 53F-2-510.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the LEA may participate in:

(a) a pre-grant submission training conducted by the Superintendent as described in Subsection (1)(a); or

(b) a leadership and change management training conducted by the Superintendent as described in Subsections (1)(b).

R277-922-8. LEA Plan Requirements.

(1) An LEA shall develop a five-year LEA plan in cooperation with educators, paraeducators, and parents,

(2) An LEA plan shall include:

(a) an LEA's results on the readiness assessment required in Section 53F-2-510;

(b) a statement of purpose that describes the learning outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

(i) a 5% increase in an LEA's growth or proficiency on the statewide accountability metrics by the end of the fifth year of the LEA's implementation of the program; or

(ii) a school level outcome:

(A) selected by the LEA;

(B) included in the LEA's plan; and

(C) approved by the advisory committee;

(c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified in an LEA's five-year plan;

(d) an implementation process structured to yield an LEA's school level outcomes;

(e) a plan for infrastructure needs and refreshment cycle;

(f) a description of necessary high quality digital primary instructional materials, as defined in Section R277-469-2, in relation to the outcomes provided for in Subsection R277-922-8(b)(i) including:

(i) providing special education students with appropriate software;

(ii) the recommended usage requirements of the software provider; and

(iii) the best practices recommended by the software or hardware provider;

(g) a detailed plan for student engagement in personalized learning;

(h) technical support standards for implementation and maintenance of the program that removes technical support burdens from the classroom teacher;

(i) proposed security policies, including security audits, student data privacy as referenced in R277-487, and remediation of identified lapses;

(j) a disclosure by an LEA of the LEA's current technology expenditures;

(k) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;

(l) a description of how an LEA will provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching;

(m) a plan for digital citizenship curricula and implementation; and

(n) a plan for how an LEA will monitor student and teacher usage of the program technology.

(2) An LEA's approved LEA plan is valid for five years, and may be required to be reapproved by the advisory committee and the Board after five years of implementation.

(3) An LEA is not required to implement the program in kindergarten through grade 4.

R277-922-9. Distribution of Grant Money to Participating LEAs.

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10 percent of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the Superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis, based on the October 1 headcount in the prior year.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the distribution formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-922-10. Prohibited Uses of Grant Money.

A participating LEA may not use grant money:

(1) to fund nontechnology programs;

(2) to purchase mobile telephones;

(3) to fund voice or data plans for mobile telephones; or

(4) to pay indirect costs charged by the LEA.

R277-922-11. Participating LEA Reporting Requirements.

Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a participating LEA shall annually:

(1) review how the participating LEA:

(a) redirected funds through the participating LEA's implementation of the LEA plan; and

(b) made progress toward implementation; and

(2) on or before October 1, report the potential savings identified in Subsection (1) to the Superintendent.

R277-922-12. Evaluation of LEA Program Implementation.

(1) An evaluation conducted by the independent evaluator described in Section 53F-2-510 shall include a review of:

(a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;

(b) a participating LEA's progress toward meeting the school level outcomes in the participating LEA's LEA plan.

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

(a) shall:

(i) provide assistance to the participating LEA; and

(ii) recommend changes to the LEA's LEA plan; or

(b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

KEY: digital teaching and learning, grant programs
January 9, 2019 **Art X Sec 3**
53E-3-401(4)
53F-2-510

R357. Governor, Economic Development.
R357-7. Utah Capital Investment Board.
R357-7-1. Purpose.

(1) The purpose of these rules is to establish criteria and procedures for the allocation and issuance of contingent tax credits by the Board.

R357-7-2. Authority.

(1) U.C.A. Sections 63N-6-203, 63N-6-401, 63N-6-406 and 63N-6-408 require the Board to:

(a) Make rules establishing the manner by which it allocates, issues, calculates, certifies and provides for the application for, transfer and redemption of, contingent tax credits;

(b) Establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors; and

(c) Set a target rate of return or range of returns for the investment portfolio of the Utah Fund of Funds.

R357-7-3. Definitions.

(1) "Accredited Investor" has the same meaning as under the U.S. Securities Act of 1933, as amended, including the rules promulgated thereunder.

(2) "Act" means the Utah Venture Capital Enhancement Act, U.C.A. Section 63N-6-101 et seq.

(3) "Actual Return" means the actual aggregate amount of cash or cash equivalents and the fair market value of property received from a Utah Fund of Funds with respect to a Private Investment, including amounts received as returns of contributed capital or returns on capital contributions and amounts received in excess of capital contributed, in whatever form received.

(4) "Annual Report" means the annual report of the activities conducted by the Utah Fund of Funds that is published by the Corporation, in consultation with the Board in accordance with U.C.A. Section 63N-6-301(6).

(5) "Auditor" means the Person that conducts the annual audit made in accordance with U.C.A. Section 63N-6-405.

(6) "Board" means the Utah Capital Investment Board, established in accordance with U.C.A. Section 63N-6-201.

(7) "Business Day" means any day other than a Saturday, Sunday, or a day on which banking institutions located in Salt Lake City, Utah are authorized by law to be closed.

(8) "Calendar Year" means, with respect to any date or event, the actual calendar year in which such date or event occurs.

(9) "Capital Invested" means the actual aggregate amount of cash or cash equivalents and the fair market value of property contributed with respect to a Private Investment in a Utah Fund of Funds, including capital contributions made by and distributions returned to such Utah Fund of Funds in accordance with the terms of the limited partnership agreement or operating agreement of the Utah Fund of Funds.

(10) "Certificate" means a "certificate" within the meaning of U.C.A. Section 63N-6-103(2).

(11) "Certificate of Eligibility" means a certificate issued in accordance with section 3 of R357-7-6 to a Designated Investor.

(12) "Certificate Register" means the register maintained by the Board recording the name, address and taxpayer identification number of each Designated Investor and all transactions involving Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates, including the maximum amount of tax credits represented by each certificate issued or Transferred to such Designated Investor.

(13) "Certification" means (i) with respect to a Certificate for contingent tax credits, the process by which the Board certifies the amount of tax credits the Designated Investor is entitled to receive in accordance with R357-7-4 or R357-7-5 as applicable, and (ii) with respect to a Certificate of Eligibility or Tax Credit Balance Certificate, the process by which the Board certifies the amount of tax credits a Designated Investor is entitled to receive upon application in accordance with R357-7-6.

(14) "Commission" means the Utah State Tax Commission.

(15) "Corporation" means Utah Capital Investment Corporation, established in accordance with U.C.A. Section 63N-6-301.

(16) "Closing" means the date of acceptance of a Designated Investor's capital commitment and admission of such Designated Investor as a limited partner or member, as applicable, in a Utah Fund of Funds.

(17) "Debt-based Refinancing" means a Private Investment structured as a loan to a Utah Fund of Funds that is used to repay all or a portion of the outstanding principal, premium or interest of an existing loan to such Utah Fund of Funds that was originated before July 1, 2014 or the modification of the terms of such an existing loan in accordance with U.C.A. Section 63N-6-406(2)(e).

(18) "Designated Investor" means (a) a Person who makes a Private Investment to whom a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate is issued, and (b) such Person's successor as a matter of law. A Transferee of a Designated Investor shall succeed to the rights of a Designated Investor with respect to a Certificate, Certification of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the extent such rights are Transferred in accordance with R357-7-7 and upon such Transfer shall be a Designated Investor for purposes of these rules.

(19) "Designated Purchaser" means a "designated purchaser" within the meaning of U.C.A. Section 63N-6-103(8).

(20) "Determination Date" means, with respect to each Utah Fund of Funds, December 31 of the Calendar Year in which the Term of such Utah Fund of Funds expires.

(21) "Economic Development Impact" means the dollar amount determined by the Board in accordance with R357-7-9.

(22) "Equity-based Refinancing" means a Private Investment structured as equity in a Utah Fund of Funds that is used to repay all or a portion of the outstanding principal, premium or interest of an existing loan made to such Utah Fund of Funds that was originated before July 1, 2014 in accordance with U.C.A. Section 63N-6-406(2)(e).

(23) "Feeder Fund" means a Designated Investor that is an investment fund, the principal purpose of which is to make a Private Investment in a Utah Fund of Funds and for which the Corporation serves as manager, general partner, or investment manager at the time of such Private Investment. A Feeder Fund may be organized in a jurisdiction other than the state of Utah.

(24) "Fiscal Year" means the fiscal year as established in U.C.A. Section 51-7-3.5.

(25) "Maturity Date" means the date specified in a Certificate, representing the earliest date such Certificate may be presented to the Board for Certification.

(26) "Person" means an individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust or any other legal or commercial entity.

(27) "Private Investment" means a "private investment" within the meaning of U.C.A. Section 63N-6-103(11).

(28) "Redemption" means the presentation of a certified

tax credit to the Commission for payment in accordance with U.C.A. Section 63N-6-408.

(29) "Redemption Reserve" means the "redemption reserve" within the meaning of U.C.A. Section 63N-6-103(12).

(30) "Scheduled Return" means the scheduled return, whether in cash, cash equivalents or other property (including returns of and returns on investment), with respect to a Private Investment as set forth in a Certificate for the period from the date of the Closing for such Private Investment to the applicable Maturity Date.

(31) "Shortfall" means the amount, if any, equal to the amount by which the Capital Invested with respect to a Private Investment in a Utah Fund of Funds exceeds the Actual Return received with respect to such Private Investment.

(32) "Target Rate of Return" means the target rate of return established by the Board in accordance with R357-7-10.

(33) "Tax Credit Balance Certificate" means a certificate issued in accordance with sections 8 or 11 of R357-7-6.

(34) "Tax Credit Eligibility" means the amount of tax credits a Designated Investor is entitled to apply for in accordance with sections 6 and 7 of R357-7-6.

(35) "Tax Credit Redemption Certificate" means a certificate issued by the Board representing a tax credit that may be claimed by a Designated Investor in accordance with U.C.A. Section 63N-6-408(4).

(36) "Term" means the period of the term of a Utah Fund of Funds prior to the commencement of its dissolution and winding up, as specified in the applicable Utah Fund of Funds operating agreement or limited partnership agreement, including any early termination or extension of such term.

(37) "Transfer" means the transfer, assignment or encumbrance of a Designated Investor's interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, made in accordance with R357-7-7.

(38) "Transferee" means the Person to whom a Designated Investor Transfers its interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, in accordance with R357-7-7.

(39) "Transferor" means the Designated Investor that is Transferring its interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, in accordance with R357-7-7.

(40) "Utah-based Investment Fund" means a private investment fund, whose principal office is maintained in the state of Utah.

(41) "Utah-based Operating Company" means an operating company, the principal executive office of which is located in the state of Utah, or that employs more than 50% of its employees in the state of Utah.

(42) "Utah Fund of Funds" means any limited partnership or limited liability company established in accordance with U.C.A. Section 63N-6-401 in which a Designated Investor makes a Private Investment. There may be more than one Utah Fund of Funds.

R357-7-4. Procedure for the Issuance, Certification and Redemption of Tax Credits for Debt-based Refinancing Transactions.

This R357-7-4 applies to the Debt-based Refinancing of existing loans to a Utah Fund of Funds that were entered into prior to July 1, 2014 even if the refinancing occurs after July 1, 2015.

(1) No later than 20 Business Days prior to each Closing of a Debt-based Refinancing, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the loan instrument(s) and other contractual agreements to be entered into by the Utah Fund of Funds or the Corporation in connection with the Debt-based Refinancing; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing of a Debt-based Refinancing, the Corporation shall provide the following information to the Board for each Person expected to become a Designated Investor at Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate principal amount of loans expected to be made at such Closing by such Designated Investor;

(e) The method of determining the scheduled principal and interest payments applicable to such Debt-based Refinancing;

(f) The Scheduled Return for the Designated Investor applicable to such Debt-based Refinancing.

(g) The maximum amount of contingent tax credits to be certified for each Certificate to be issued at Closing;

(h) The Maturity Date or Maturity Dates for each Certificate to be issued at Closing; and

(i) All of the requested contingencies to be applicable to the contingent tax credits to which such Certificate relates.

(3) Upon receipt of the information identified in sections 1 and 2 of this R357-7-4, the Board shall issue a Certificate for contingent tax credits in accordance with U.C.A. Section 63N-6-406, to each Designated Investor identified at Closing with respect to such Designated Investor's Private Investment to be made at Closing. The following provisions shall apply to such Certificates:

(a) Certificates may only be issued by the Board;

(b) Certificates shall be based on the principal amount invested in the applicable Utah Fund of Funds plus scheduled interest.

(c) The maximum amount of contingent tax credits represented by each Certificate shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a);

(d) The maximum amount of outstanding Certificates that may be redeemed in a Fiscal Year will be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c).

(e) The maximum amount of tax credits to be certified for a Private Investment may not exceed the difference between (i) the Scheduled Return for such Private Investment and (ii) the Actual Return received with respect to such Private Investment, determined as of the applicable Maturity Date.

(4) Each Certificate issued to a Designated Investor in connection with a Debt-based Refinancing shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to which such Certificate relates;

(b) The amount of the Designated Investor's maximum principal loan amount and interest rate;

(c) All contingencies applicable to the tax credits to which such Certificate relates;

(d) The date of issuance of such Certificate;

(e) The Maturity Date or Maturity Dates of such Certificate;

(f) The maximum amount of contingent tax credits represented by such Certificate;

(g) The process for presenting the Certificate for Certification and Redemption; and

(h) Such other provisions the Board determines to be include that are consistent with the Act and these rules.

(5) Certification of Contingent Tax Credits:

(a) To redeem a Certificate for tax credits, a Designated Investor shall present the Board with its Certificate for Certification no later than June 30 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for Certification under such Certificate, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate in accordance with U.C.A. Section 63N-6-409.

(d) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents shall include but are not limited to the following:

(i) Contractual agreements to which either any of the Corporation, the Designated Investor or any applicable Utah Fund of Funds is a party that were entered into in connection with the Debt-based Refinancing.

(ii) All documents and financial information necessary to calculate the actual amounts paid by the Utah Fund of Funds to the Designated Investor with respect to its Private Investment in the Utah Fund of Funds.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to a Certificate.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 5(d) of this R357-7-4 the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate, if any.

(f) The Board shall provide the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such Certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(g) If the certified Certificate has more than one Maturity Date, the Board shall issue to the Designated Investor a Tax Credit Redemption Certificate for the certified tax credits for the applicable Maturity Date in accordance with section 5(f) of this R357-7-4 and shall issue to the Designated Investor one or more Certificates for the balance of any contingent tax credits applicable to future Maturity Dates for which the tax credits are not then being certified.

(h) Certificates being certified for a Maturity Date shall be certified pro rata with all other Certificates being certified for the same Maturity Date.

(i) If a Certificate for contingent tax credits has more than one Maturity Date, the Maturity Date or Maturity Dates occurring in the same Calendar Year on which the Certificate was presented to the Board for certification shall be the Maturity Date or Maturity Dates used for purposes of Certification under this R357-7-4.

(j) Once a Tax Credit Redemption Certificate has been issued, the Board shall notify the Commission of such issuance within five Business Days.

(k) Upon Certification of a Certificate, the Board shall cancel such Certificate, unless such Certificate has a Maturity Date that has not expired, in which case the Board shall issue a balance Certificate in accordance with section 5(g) of this R357-7-4.

(6) Expiration or Cancellation of Tax Credits Represented by Certificates. Tax credits represented by a Certificate shall expire or be cancelled as provided in the Certificate.

(7) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate applicable to such Private Investment to the Board for Certification in accordance with this R357-7-4 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Maturity Date all of the indebtedness owed to such Designated Investor by the applicable Utah Fund of Funds. Any payments made by such Utah Fund of Funds to such Designated Investor after the Maturity Date with respect to such assigned indebtedness shall reduce the amount of tax credits represented by the Tax Redemption Certificate to be issued to such Designated Investor. Any amounts received by the Corporation with respect to such assigned indebtedness shall be paid first to the state of Utah in an amount up to the amount of tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-5. Procedure for the Issuance, Certification and Redemption of Tax Credits for Equity-based Refinancing Transactions.

This R357-7-5 applies to the Equity-based Refinancing of existing loans to Utah Fund of Funds that were entered into prior to July 1, 2014 even if the refinancing occurs after July 1, 2015.

(1) No later than 20 Business Days prior to each Closing of an Equity-based Refinancing, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the limited partnership agreement or the operating agreement of the issuing Utah Fund of Funds and other contractual agreements to be entered into by the Utah Fund of Funds or the Corporation in connection with the Equity-based Refinancing; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing of an Equity-based Refinancing, the Corporation shall provide the following information to the Board for each Person expected to become a Designated Investor at Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate amount of the capital commitment expected to be made at such Closing by such Designated Investor;

(e) The maximum amount of contingent tax credits to be certified for each Certificate to be issued at Closing;

(f) The Maturity Date or Maturity Dates for each

Certificate to be issued at Closing; and

(g) All of the requested contingencies to be applicable to the contingent tax credits to which such Certificate relates.

(3) Upon receipt of the information identified in sections 1 and 2 of this R357-7-5, the Board shall issue a Certificate for contingent tax credits in accordance with U.C.A. Section 63N-6-406, to each Designated Investor identified at Closing with respect to such Designated Investor's Private Investment to be made at Closing. The following provisions shall apply to such Certificates:

(a) Certificates may only be issued by the Board;

(b) Certificates shall be based on the Capital Invested in the applicable Utah Fund of Funds.

(c) The maximum amount of contingent tax credits represented by each Certificate shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a);

(d) The maximum amount of outstanding Certificates that can be redeemed in a Fiscal Year will be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c).

(e) The maximum amount of tax credits to be certified for a Designated Investor may not exceed any Shortfall attributable to such Designated Investor's Private Investment, determined as of the applicable Maturity Date.

(4) Each Certificate issued to a Designated Investor in connection with an Equity-based Refinancing shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to which such Certificate relates;

(b) The amount of the Designated Investor's maximum investment commitment;

(c) All contingencies applicable to the tax credits to which such Certificate relates;

(d) The date of issuance of such Certificate;

(e) The Maturity Date or Maturity Dates of such Certificate;

(f) The maximum amount of the contingent tax credits represented by such Certificate;

(g) The process for presenting the Certificate for Certification and Redemption; and

(h) Such other provisions the Board determines to include that are consistent with the Act and these rules.

(5) Certification of Contingent Tax Credits:

(a) To redeem a Certificate for tax credits, a Designated Investor shall present the Board with its Certificate for Certification no later than June 30 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for certification under such Certificate, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate in accordance with U.C.A. Section 63N-6-409.

(d) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents include but are not limited to the following:

(i) Contractual agreements to which any of the Corporation, the Designated Investor or any applicable Utah Fund of Funds is a party that were entered into in connection with the Equity-based Refinancing.

(ii) All documents and financial information necessary to calculate the actual amounts paid by the Utah Fund of Funds to the Designated Investor with respect to its Private Investment in the Utah Fund of Funds.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to a Certificate.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 5(d) of this R357-7-5 the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate, if any.

(f) The Board shall provide the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such Certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(g) If the certified Certificate has more than one Maturity Date, the Board shall issue to the Designated Investor a Tax Credit Redemption Certificate for the certified tax credits for the applicable Maturity Date in accordance with section 5(f) of this R357-7-5 and shall issue to the Designated Investor one or more Certificates for the balance of any contingent tax credits applicable to future Maturity Dates for which the tax credits are not then being certified.

(h) Certificates being certified for a Maturity Date shall be certified pro rata with all other Certificates being certified for the same Maturity Date.

(i) If a Certificate for contingent tax credits has more than one Maturity Date, the Maturity Date or Maturity Dates occurring in the same Calendar Year on which the Certificate was presented to the Board for certification shall be the Maturity Date or Maturity Dates used for purposes of Certification under this R357-7-5.

(j) Once a Tax Credit Redemption Certificate has been issued, the Board will notify the Commission of such issuance within five Business Days.

(k) Upon Certification of a Certificate, the Board shall cancel such Certificate, unless such Certificate has a Maturity Date that has not expired, in which case the Board shall issue a balance Certificate in accordance with section 5(g) of this R357-7-5.

(6) Expiration or Cancellation of Tax Credits Represented by Certificates. Tax credits represented by a Certificate shall expire or be cancelled as provided in the Certificate.

(7) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate applicable to such Private Investment to the Board for Certification in accordance with this R357-7-5 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Maturity Date all of such Designated Investor's Private Investment in the applicable Utah Fund of Funds. Such assignment shall include, without limitation,

any and all rights to future distributions, dividends, redemption proceeds or other payments from such Utah Fund of Funds attributable to such Private Investment. Any payments made by such Utah Fund of Funds to such Designated Investor after the Maturity Date with respect to such assigned interest shall reduce the amount of tax credits represented by the Tax Redemption Certificate to be issued to such Designated Investor. Any amounts received by the Corporation with respect to such assigned interest shall be paid first to the state of Utah in an amount up to the amount of certified tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-6. Procedure for the Application, Issuance, Certification and Redemption of Economic Development Incentive-based Tax Credits for Equity-based Investments in a Utah Fund of Funds.

This R357-7-6 applies to Private Investments structured as equity investments in any Utah Fund of Funds initiated on or after July 1, 2015, excluding any Equity-based Refinancing.

(1) No later than 20 Business Days prior to each Closing to which this R357-7-6 applies, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the limited partnership agreement or the operating agreement of the applicable Utah Fund of Funds and any other contractual agreements to be entered into by the applicable Utah Fund of Funds, the Corporation and any Designated Investor in connection with its Private Investment in a Utah Fund of Funds; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing, the Corporation shall provide the Board with the following information with respect to each Person expected to become a Designated Investor at such Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate amount of the capital commitment expected to be made at such Closing by the Designated Investor; and

(e) The Term of the applicable Utah Fund of Funds.

(3) Within 20 Business Days after each Closing, the Board shall issue to each Designated Investor that has invested in the applicable Utah Fund of Funds at such Closing a Certificate of Eligibility.

(a) The maximum aggregate amount of tax credits for which a Designated Investor may apply as represented by its Certificate of Eligibility shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a).

(b) A Certificate of Eligibility shall entitle a Designated Investor to apply for a Tax Credit Redemption Certificate in accordance with this R357-7-6 as in effect at the time such Certificate of Eligibility was certified by the Board and may not be modified, terminated or rescinded without the consent of such Designated Investor.

(4) Each Certificate of Eligibility shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to whom the Certificate of Eligibility is issued;

(b) The maximum amount of tax credits represented by such Certificate of Eligibility for which such Designated Investor is eligible to apply (which shall be equal to such Designated Investor's capital commitment to the applicable Utah Fund of Funds);

(c) The date of issuance of the Certificate of Eligibility; and

(d) A statement that such Designated Investor is eligible to apply for tax credits represented by a Tax Credit Redemption Certificate, subject to the limitations set forth in this R357-7-6.

(5) Application for Tax Credits or other Payments.

(a) A Designated Investor who has received a Certificate of Eligibility may apply to the Board for tax credits represented by a Tax Credit Redemption Certificate if the following conditions are satisfied:

(i) Subject to section 5(c) of this R357-7-6, such Designated Investor has contributed capital to the applicable Utah Fund of Funds in the amount required under the agreement between such Utah Fund of Funds and the Designated Investor;

(ii) The Term of the applicable Utah Fund of Funds has expired.

(iii) As of the Determination Date, there is a Shortfall attributable to such Designated Investor's Private Investment.

(iv) There is Economic Development Impact attributable to the applicable Utah Fund of Funds as most recently certified by the Board in accordance with R357-7-9 and section 12 of this R357-7-6 prior to the Determination Date.

(v) As of the Determination Date, there are insufficient funds in the Redemption Reserve available to make a cash payment equal to the amount of the lesser of (i) the Shortfall described in section 5(a)(iii) of this R357-7-6 for all Designated Investors of the applicable Utah Fund of Funds, and (ii) the amount of Economic Development Impact described in section 5(a)(iv) of this R357-7-6 attributable to such Designated Investors.

(b) Any Designated Investor not eligible to apply for tax credits as a result of the condition set forth in section 5(a)(v) of this R357-7-6, may present its Certificate of Eligibility to the Board no later than the June 30 following the Determination Date, and to the extent such Certificate of Eligibility would otherwise be certified in accordance with this R357-7-6 absent such condition, the Board shall direct the Corporation to make a cash payment from the Redemption Reserve or other sources with respect to such Designated Investors in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor by no later than September 1 of the Calendar Year immediately following the Determination Date, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(c) If a Feeder Fund fails to contribute capital to a Utah Fund of Funds with respect to which such Feeder Fund is a Designated Investor in the amount required under the agreement between such Utah Fund of Funds and such Feeder Fund, and such failure is a direct result of the failure of any member, partner or other equity investor of such Feeder Fund (a "Feeder Fund Investor") to make a contribution of capital required to be made to such Feeder Fund, then the restriction on applying for tax credits set forth in section 5(a)(i) of this R357-7-6 shall apply only to (i) that portion of the tax credits represented by the Certificate of Eligibility issued to such Feeder Fund that bears the same proportion to the aggregate tax credits represented by such Certificate of Eligibility, as the obligation to contribute capital to such Feeder Fund of such Feeder Fund Investor bears to the aggregate obligations to contribute capital to such Feeder Fund of all its Feeder Fund Investors or (ii) any Certificate of Eligibility Transferred to such Feeder Fund Investor by such Feeder

Fund.

(6) Upon the satisfaction of the conditions set forth in section 5(a) of this R357-7-6, a Designated Investor may apply for a Tax Credit Redemption Certificate, in a form prescribed by the Board in accordance with this R357-7-6. The Tax Credit Redemption Certificate shall be issued in an amount equal to the lesser of (i) the Economic Development Impact attributable to such Designated Investor determined in accordance with R357-7-9 and section 12 of this R357-7-6 and (ii) the Shortfall attributable to such Designated Investor's Private Investment, in each case calculated as of the Determination Date.

(7) To apply for tax credits, a Designated Investor shall present the Board with its Certificate of Eligibility no later than the first June 30 following the Determination Date. If for any reason a Designated Investor fails to present its Certificate of Eligibility to the Board on time, such Certificate of Eligibility shall automatically expire without further action of the Board and any eligibility to apply for tax credits represented thereby shall be forfeited.

(a) The amount of tax credits represented by a Certificate of Eligibility that the Board is permitted to certify in a Fiscal Year upon application by a Designated Investor will be calculated and allocated in accordance with section 13 of this R357-7-6.

(b) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents include but are not limited to the following:

(i) Contractual agreements to which either the Corporation or any applicable Utah Fund of Funds is a party that were entered into in connection with the Designated Investor's Private Investment in the applicable Utah Fund of Funds.

(ii) All financial information and related documents necessary to calculate the Shortfall attributable to such Designated Investor's Private Investment.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to such Certificate of Eligibility.

(c) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate of Eligibility in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for certification under such Certificate of Eligibility, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates of Eligibility and Tax Credit Balance Certificates.

(d) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate of Eligibility in accordance with U.C.A. Section 63N-6-409.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year immediately following the Determination Date or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 7(b) of this R357-7-6, the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate of Eligibility, if any.

(f) The Board shall Issue each Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such certificate (if any) that may be claimed by such Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(g) Once a Tax Credit Redemption Certificate has been issued, the Board will notify the Commission of such issuance within five Business Days.

(h) Upon issuance of a Tax Credit Redemption Certificate, the Board shall cancel the related Certificate of Eligibility.

(8) To the extent that, in accordance with section 7(a) of this R357-7-6, the Board is not permitted to certify all of the tax credits represented by a Designated Investor's Certificate of Eligibility, upon cancellation of the Certificate of Eligibility in accordance with section 7(h) of this R357-7-6, the Board shall issue to such Designated Investor a Tax Credit Balance Certificate for the amount of remaining tax credits that were limited by section 7(a) of this R357-7-6. The amount of tax credits for which a Designated Investor is eligible to apply represented by its Tax Credit Balance Certificate shall not be adjusted for any Economic Development Impact measurements made in accordance with R357-7-9 for any period after the applicable Determination Date.

(9) A Tax Credit Redemption Certificate issued to a Designated Investor shall contain each of the following:

(a) The name, address and taxpayer identification number of such Designated Investor;

(b) The date of issuance of the Tax Credit Redemption Certificate; and

(c) The amount of tax credits to be claimed.

(10) A Tax Credit Balance Certificate issued to a Designated Investor shall contain each of the following:

(a) The name, address and taxpayer identification number of such Designated Investor;

(b) The date of issuance of the Tax Credit Balance Certificate;

(c) The certificate number of the cancelled Certificate of Eligibility to which the Tax Credit Balance Certificate relates;

(d) The amount tax credits represented by such Tax Credit Balance Certificate; and

(e) The Fiscal Year or Fiscal Years in which such Designated Investor shall be eligible to apply for tax credits represented by such Tax Credit Balance Certificate.

(11) During each the Fiscal Year set forth on a Tax Credit Balance Certificate, a Designated Investor may apply for Certification of the tax credits represented by such Tax Credit Balance Certificate by presenting it to the Board no later than June 30 of such Fiscal Year. If for any reason a Designated Investor fails to present its Tax Credit Balance Certificate to the Board in a timely fashion, such Tax Credit Balance Certificate shall automatically expire without further action of the Board and any amount of tax credits represented thereby shall be forfeited.

(a) The amount of tax credits represented by a Tax Credit Balance Certificate that the Board is permitted to certify in a Fiscal Year upon application by a Designated Investor will be calculated and allocated in accordance with section 13 of this R357-7-6.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve and payments shall be made in a manner consistent with that specified in section 7(c) of this R357-7-6.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Tax Credit Balance Certificate in accordance with U.C.A. Section 63N-6-409.

(d) No later than September 1 of the applicable Fiscal

Year set forth in applying Designated Investor's Tax Balance Certificate, the Board shall determine and certify to such Designated Investor the amount of tax credits related to such Tax Credit Balance Certificate (if any) that may be redeemed in such Fiscal Year.

(e) The Board shall issue to the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and R357-7-11.

(f) Once a tax credit has been certified for redemption, the Board will notify the Commission of such certification within five Business Days.

(g) Upon Certification for redemption of a Tax Credit Balance Certificate, the Board shall cancel such Tax Credit Balance Certificate.

(h) To the extent that, in accordance with section 11(a) of this R357-7-6, the Board was not permitted to certify all of the tax credits represented by a Designated Investor's Tax Credit Balance Certificate in the Fiscal Year applied for, upon cancellation of the Tax Credit Balance Certificate in accordance with section 11(g) of this R357-7-6, the Board shall issue to such Designated Investor a new Tax Credit Balance Certificate for the amount of remaining tax credits that were limited by section 11(a) of this R357-7-6, and the Designated Investor may apply for Certification of such certificate in the following Fiscal Year or Fiscal Years in accordance with this section 11.

(12) The amount of Economic Development Impact certified by the Board in accordance with R357-7-9 shall be allocated to each Designated Investor in accordance with this section 12.

(a) The amount of Economic Development Impact measured in accordance with sections 2 and 3 of R357-7-9 shall be allocated to each Designated Investor of the applicable Utah Fund of Funds on a pro rata basis, based on its aggregate capital commitment to such applicable Utah Fund of Funds compared to the aggregate capital commitments of all other Designated Investors in such applicable Utah Fund of Funds.

(b) The amount of Economic Development Impact measured in accordance with section 4 of R357-7-9 shall be allocated to the Designated Investors of the various Utah Funds of Funds as determined by the contractual agreements between such Designated Investors and such Utah Funds of Funds with respect to such Designated Investors' respective Private Investments in such Utah Funds of Funds.

(c) The amount of Economic Development Impact determined in accordance with section 5 of R357-7-9 shall be allocated:

(i) to each Designated Investor of the applicable Utah Fund of Funds on a pro rata basis based on its aggregate capital commitment to such applicable Utah Fund of Funds compared to the aggregate capital commitments of all other Designated Investors in such applicable Utah Fund of Funds, if such Economic Development Impact is in respect of an applicable Utah Fund of Funds; or

(ii) to the Designated Investors of the various Utah Funds of Funds as determined by the contractual agreements between such Designated Investors and such Utah Funds of Funds with respect to such Designated Investors' respective Private Investments in such Utah Funds of Funds, if such Economic Development Impact is in respect of the activities of the Corporation.

(13) The maximum amount of tax credits the Board is permitted to certify in accordance with this R357-7-6 with respect to Certificates of Eligibility and Tax Credit Balance Certificates presented to the Board by Designated Investors of a Utah Fund of Funds in any Fiscal Year shall be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c). For the purposes of such calculation:

(a) The $100,000,000 increment set forth in U.C.A. Section 63N-6-406(2)(c) shall be determined by reference to the aggregate capital commitments made by each of the Designated Investors that is eligible to apply for such credits in such Fiscal Year, as set forth on the applicable Certificate of Eligibility of such Designated Investor; and

(b) Available tax credits shall be allocated among such Designated Investors on a pro rata basis in accordance with on their respective capital commitments to the applicable Utah Fund of Funds.

(14) A tax credit represented by a Certificate of Eligibility or Tax Credit Balance Certificate may only be redeemed by a Designated Investor in accordance with the terms of the Certificate of Eligibility or Tax Credit Balance Certificate, as applicable, this R357-7-6 and U.C.A. Section 63N-6-408.

(15) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate of Eligibility applicable to such Private Investment to the Board for Certification of tax credits represented by such certificate in accordance with this R357-7-6 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Determination Date a portion of such Designated Investor's Private Investment in the applicable Utah Fund of Funds equal to a fraction, calculated as of the Determination Date, the numerator of which is the amount of such Designated Investor's Tax Credit Eligibility and the denominator of which is the Shortfall attributable to such Designated Investor's Private Investment. Such assignment shall include, without limitation, any and all rights to distributions, dividends, redemption proceeds or other payments from such Utah Fund of Funds attributable to such Private Investment that are made after the Determination Date. Any distributions, dividends, redemption proceeds or other payments made by such Utah Fund of Funds after the Determination Date with respect to such assigned interest to such Designated Investor shall reduce the amount of tax credits that may be issued with respect to the applicable Certificate of Eligibility. Any amounts received by the Corporation with respect to such assigned interest shall be paid first to the state of Utah in an amount up to the amount of tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-7. Transfer of Certificates, Tax Credit Redemption Certificates, Certificates of Eligibility and Tax Credit Balance Certificates.

(1) Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates shall be transferrable in whole or in part by a Designated Investor to any Transferee or Transferees.

(2) Transfer of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate may be effected by the Transferor's surrender of such certificate to the Board with an endorsement in favor of the Transferee, a statement containing the name, address and taxpayer identification number of the Transferee and a written request for the Board to issue a replacement certificate in the name of the Transferee.

(a) In any case where the Transferor requests that more than one replacement certificate be issued, such request must be accompanied by a statement by the Transferor that sets forth the amount of tax credits represented by the Transferred

Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate that are requested to be represented by each replacement Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate.

(3) Within 20 Business Days after the surrender and endorsement of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, the Board shall issue one or more replacement Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates or Tax Credit Balance Certificates, as applicable, in the name of the applicable Transferee. If a Transferor requests the Transfer of only a portion of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, the Board shall issue a replacement Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the Transferor setting forth the aggregate amount of remaining tax credits represented by such Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate.

(4) Upon the surrender of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the Board, and the issuance of the applicable replacement certificate or certificates for Transfer, such surrendered certificate shall be cancelled.

(5) A Designated Investor may grant security interests in such Designated Investor's Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, and any tax credits represented thereby, as collateral for loans to or other obligations of such Designated Investor. The Designated Investor shall provide notice to the Board of any such grant of a security interest promptly after any such grant is made.

(6) A Designated Investor shall be entitled to Transfer a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate without also transferring its corresponding Private Investment in a Utah Fund of Funds. In such event, a Transferee will be entitled to exercise its rights with respect to a Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, as described in such certificate, and as set forth in the Act and the rules set forth in this chapter, by reference to the portion of the Transferor's Private Investment held prior to such Transfer that bears the same proportion to the Transferor's total Private Investment held prior to such Transfer that the tax credits represented by such Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate bears to the total tax credits represented by the Transferor's Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate prior to such Transfer, as if such portion of the Transferor's Private Investment had been Transferred to the Transferee. Accordingly, the Capital Invested, Scheduled Return, and Actual Return applicable to the Transferee shall be determined by reference to such portion of the Transferor's Private Investment, including amounts related to principal loaned, capital contributed, receipts and returns that are transacted prior to such Transfer with respect to such portion. If a Transferor does not hold a Private Investment, a Transferee of a Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate shall be entitled to the exercise the rights with respect thereto by reference to the Private Investment of such Transferor's predecessor or successor in interest, as the case may be, in the same proportions as described above.

R357-7-8. Criteria and Procedures for Assessing the Likelihood of Future Certificate Redemption.

(1) Each year, the Corporation and/or the allocation manager designated in accordance with U.C.A. Section 63N-6-301(2)(b) will provide the Board with a comprehensive report including the following:

(a) A detailed accounting of cash outflows and cash inflows from investments made by each Utah Fund of Funds during the previous Calendar Year.

(b) A detailed accounting of payments made to lenders to or equity investors in each Utah Fund of Funds during the previous Calendar Year.

(c) A detailed accounting of management fees paid to the Corporation by each Utah Fund of Funds during the previous Calendar Year.

(d) A detailed accounting of increases or decreases in unrealized value of the assets of each Utah Fund of Funds during the Previous Calendar Year.

(e) A five year projection of cash flows with sensitivity around investment returns, interest rates and distribution pacing for each Utah Fund of Funds.

(f) Third party audit of each Utah Fund of Funds including asset valuation as of the end of the previous Calendar Year.

(g) The internal rate of return on each investment made by each Utah Fund of Funds through the end of the previous Calendar Year.

R357-7-9. Criteria and Procedures for Calculating the Economic Development Impact of Each Utah Fund of Funds and the Corporation for Purposes of Incentive-Based Tax Credits.

The Economic Development Impact attributable to each Utah Fund of Funds for equity-based Private Investments that were initiated on or after July 1, 2015 and to the Corporation shall be measured and determined in accordance with this R357-7-9.

(1) The Economic Development Impact attributable to each Utah Fund of Funds for equity-based Private Investments determined in accordance with U.C.A. Section 63N-6-406(3)(d)(i) shall be equal to the sum of all investments made by such Utah Fund of Funds directly or indirectly in Utah-based Operating Companies plus verifiable amounts invested in Utah-based Operating Companies and Utah-based Investment Funds by third parties (other than amounts invested directly by a Utah Fund of Funds or indirectly by any portfolio fund held by any Utah Fund of Funds) that are directly facilitated by the Corporation's economic development plan and economic development activities, calculated in accordance with sections 2, 3 and 4 of this R357-7-9, respectively.

(2) Direct Investments. A direct investment made by a Utah Fund of Funds in a Utah-based Operating Company shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment.

(a) The "Cost" of a direct investment by a Utah Fund of Funds shall mean the sum of all amounts paid by such Utah Fund of Funds to make debt or equity investments in such Utah-based Operating Company as reported in the financial statements of such Utah Fund of Funds.

(b) The "Exit Value" of a direct investment by a Utah Fund of Funds shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of any debt or equity investments made in such Utah-based Operating Company as reported in the financial statements of such Utah Fund of Funds plus the fair market value of all equity investments held by such Utah Fund of Funds based on the closing sale price of such equity investments on the expiration date of any applicable contractual restrictions on

transfer of such equity investments that are entered into by such Utah Fund of Funds in connection with an underwritten initial public offering of such Utah-based Operating Company.

(c) The Exit Value of a direct investment in such Utah-based Operating Company by a Utah Fund of Funds shall apply only to that portion of an investment that is actually sold or otherwise disposed of, or that is held by such Utah Fund of Funds on the expiration date of any applicable contractual restrictions on transfer of equity investments that are entered into by such Utah Fund of Funds in connection with an underwritten initial public offering of such Utah-based Operating Company; all other direct investments made in a Utah-based Operating Company shall be measured by reference to Cost.

(3) Indirect Investments. An indirect investment made by a Utah Fund of Funds in a Utah-based Operating Company shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment, in each case as attributable to such Utah Fund of Funds.

(a) The amount of indirect investments attributable to such Utah Fund of Funds in a Utah-based Operating Company shall be the amount of all investments in such Utah-based Operating Company made by a portfolio fund held by such Utah Fund of Funds multiplied by a fraction, the numerator of which is such Utah fund of fund's capital commitment to the applicable portfolio fund and the denominator of which is the aggregate capital commitments of all partners, members or other category of equity investor with similar status of such portfolio fund, each as reported in the financial statements or other investor reports of such portfolio fund.

(b) The "Cost" of a portfolio fund's investment shall mean the sum of all amounts paid by such portfolio fund to make debt or equity investments in such Utah-based Operating Company, as reported in the financial statements or other investor reports of such portfolio fund.

(c) The "Exit Value" of a portfolio fund's investment in such Utah-based Operating Company shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of all debt or equity investments in such Utah-based Operating Company and the value attributed to such investment made at the time of the distribution in kind of such investment to the partners, members or other category of equity investor with similar status of such portfolio fund as reported in the financial statements or other investor reports of such portfolio fund.

(d) The Exit Value of a portfolio fund's investment shall only apply to that portion of the investment that is actually sold, disposed of, or distributed in kind as of the time of determination; all other investments made by a portfolio fund shall be measured by reference to Cost.

(4) Investments by Third Parties Facilitated by the Corporation. Verifiable amounts invested in Utah-based Operating Companies (other than amounts invested directly by a Utah Fund of Funds or indirectly by any portfolio fund held by any Utah Fund of Funds) and in Utah-based Investment Funds that are directly facilitated by the Corporation's economic development plan and economic development activities shall, at the time of determination, be measured as follows:

(a) The amount invested directly by a third party (other than a Utah Fund of Funds or a portfolio fund held by any Utah Fund of Funds) in a Utah-based Operating Company will be included in the Economic Development Impact attributable to the Corporation if the Corporation's facilitation of such investment and the investment amount is confirmed in writing to the Corporation by either such third party or such Utah-based Operating Company in a manner consistent with section 4(c) of this R357-7-9 and shall be measured in accordance with this section 4(a) by reference to the greater of Cost of such investment or the Exit Value of such investment.

(i) The "Cost" of a direct investment by such third party in a Utah-based Operating Company shall mean the sum of all amounts paid by such third party to make debt or equity investments in such Utah-based Operating Company as confirmed in writing by such third party in accordance with section 4(c) of this R357-7-9.

(ii) The "Exit Value" of a direct investment by such third party shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of any debt or equity investments made in such Utah-based Operating Company plus the fair market value of all equity investments held by such third party based on the closing sale price of such equity investments on the expiration date of any applicable contractual restrictions on transfer of such equity investments that are entered into by such third party in connection with an underwritten initial public offering of such Utah-based Operating Company, in each case as confirmed in writing by such third party in accordance with section 4(c) of this R357-7-9.

(iii) The Exit Value of a direct investment in such Utah-based Operating Company by a Utah Fund of Funds shall apply only to that portion of an investment that is actually sold or otherwise disposed of, or that is held by such third party on the expiration date of any applicable contractual restrictions on transfer of equity investments that are entered into by such third party in connection with an underwritten initial public offering of such Utah-based Operating Company; all other direct investments made in a Utah-based Operating Company by such third party shall be measured by reference to Cost.

(b) The amount invested indirectly by a third party (other than a Utah Fund of Funds or a portfolio fund held by any Utah Fund of Funds) in a Utah-based Operating Company through its investment in a Utah-based Investment Fund will be included in the Economic Development Impact attributable to the Corporation if the Corporation's facilitation of such investment and the investment amount is confirmed in writing to the Corporation by either such third party or such Utah-based Investment Fund in a manner consistent with section 4(c) of this R357-7-9 and shall be measured in accordance with this section 4(b). The Economic Development Impact of the amount indirectly invested by such third party in a Utah-based Operating Company through its investment in a Utah-based Investment Fund shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment, in each case, as attributable to such third party.

(i) The amount of indirect investments attributable to such third party in a Utah-based Operating Company shall be the amount of all investments in such Utah-based Operating Company made by such Utah-based Investment Fund multiplied by a fraction, the numerator of which is such third party's capital commitment to such Utah-based Investment Fund and the denominator of which is the aggregate capital commitments of all partners, members or other category of equity investor with similar status of such Utah-based Investment Fund, each as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this R357-7-9.

(ii) The "Cost" of such Utah-based Investment Fund's investment shall mean the sum of all amounts paid by such Utah-based Investment Fund to make debt or equity investments in such Utah-based Operating Company, as confirmed in writing by the Utah-based Investment Fund in

accordance with section 4(c) of this R357-7-9.

(iii) The "Exit Value" of a such Utah-based Fund of Fund's investment in such Utah-based Operating Company shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of all debt or equity investments in such Utah-based Operating Company and the value attributed to such investment made at the time of the distribution in kind of such investment to the partners, members or other category of equity investor with similar status of third party as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this R357-7-9.

(iv) The Exit Value of a third party's investment shall only apply to that portion of the investment that is actually sold, disposed of, or distributed in kind as of the time of determination; all other investments made by such third party shall be measured by reference to Cost.

(c) The confirmation in writing referred to in sections 4(a) and 4(b) of this R357-7-9 shall be made by a responsible officer or equivalent representative of the third party, the Utah-based Operating Company or the Utah-based Investment Fund and shall include (i) the identity of the Utah-based Operating Company or the Utah-based Investment Fund, (ii) a statement that the Corporation was a significant factor in an investment in such Utah-based Operating Company or Utah-based Investment Fund having been made, (iii) the Cost of such investment made by such third party through the date of the confirmation, (iv) the amount of commitments by such third party to make additional investments in the future, and (v) to the extent applicable, the Exit Value of such investment made by such third party through the date of the confirmation. A confirmation may be provided from time to time to update the Cost of investments made, any outstanding commitments to invest and the Exit Value of investments, which update shall be taken into account in determining Economic Development Impact attributable to the Corporation through the date of the most recent confirmation. Any such written confirmation may be contained in an email or other electronic transmission.

(d) The Economic Development Impact attributable to the Corporation shall be measured by reference to amounts invested as specified in sections 4(a) and 4(b) of this R357-7-9 after enactment of the 2015 amendments to the Utah Venture Capital Enhancement Act.

(5) Third Party Evaluations Authorized by the Board. With approval from the Board, the Corporation may engage an independent third party experienced in evaluating economic development activities to evaluate a Utah Fund of Funds and determine the Economic Development Impact of such Utah Fund of Funds and the activities of the Corporation in accordance with U.C.A. Section 63N-6-406(3)(d)(ii) as follows.

(a) The independent third party shall use a nationally recognized economic development modeling tool approved by the Board.

(b) The Economic Development Impact of a Utah Fund of Funds shall be determined by reference to the economic development impact of the Utah-based Operating Companies in which such Utah Fund of Funds has directly or indirectly invested.

(c) The Economic Development Impact of the Corporation shall be determined by reference to the result of the economic development activities engaged in by the Corporation, including the facilitation by the Corporation of investment in Utah-based Operating Companies and Utah-based Investment Funds.

(d) The Corporation shall provide to the independent third party all information and documents reasonably available to it that the independent third party requests and determines are necessary for the third party make its determination in accordance with this section 5.

(6) Any determination by an independent third party conducted in accordance with section 5 of this R357-7-9 shall adjust the Economic Development Impact attributable under sections 2, 3 and 4 of this R357-7-9 to any Utah Fund of Funds or the Corporation with respect to any investment in a Utah-based Operating Company or Utah-based Investment Fund to account only for Economic Development Impact incremental to the Economic Development Impact that has been attributed under sections 2, 3 and 4 of this R357-7-9 in order to avoid double counting.

(7) The Corporation's Annual Report made in accordance with U.C.A. Section 63N-6-301(6) shall include the following information.

(a) The amounts invested directly or indirectly by each Utah funds of funds into Utah-based Operating Companies and the resulting measurement of Economic Development Impact determined in accordance with sections 2 and 3 of this R357-7-9.

(b) The amounts invested in Utah-based Operating Companies (other than amounts invested by portfolio funds held by any Utah Fund of Funds) and Utah-based Investment Funds that are facilitated by the Corporation's economic development plan and activities and the resulting measurement of Economic Development Impact determined in accordance with section 4 of this R357-7-9.

(c) Any independent third party's evaluations of Economic Development Impact made in accordance with section 5 of this R357-7-9.

(8) The Auditor's opinion required by U.C.A. Section 63N-6-405(4)(d) shall address the information in the Annual Report included in accordance with section 7 of this R357-7-9. Such opinion may be based upon the performance by the Auditor of agreed upon procedures as specified by the Board, which procedures may include reliance upon the financial statements or other investor reports of the portfolio funds of the Utah Fund of Funds, the certifications of the third party investors, Utah-based Operating Companies and Utah-based Investment Funds made in accordance with sections 2, 3 and 4 of this R357-7-9 and the most recent determinations of any independent third party made in accordance with section 5 of this R357-7-9, in each case without the need to verify the accuracy of such financial statements, certifications or determinations.

(9) The Board shall review the amount of Economic Development Impact reported by the Corporation in accordance with section 5 of this R357-7-9 and within 45 Business Days, unless good cause exists to extend the number of days, following receipt from the Corporation of the report of the independent third party the Board shall either (a) approve the amount of Economic Development Impact stated in the report, or

(b) notify the Corporation of any disagreement with such amount setting forth the reasons for such disagreement.

(a) Upon approval of the amount of Economic Development Impact set forth in the report, the Board shall certify the Economic Development Impact to the Corporation.

(b) If the Board notifies the Corporation of its disagreement with the amount of Economic Development Impact stated in the report, the Corporation shall respond in writing to the Board within 15 Business Days of receipt of notice from the Board of its disagreement. The Corporation's response shall include either an explanation addressing the Board's reasons for disagreement or a revised determination of the amount of Economic Development Impact and the basis therefore.

(c) The Board shall certify to the Corporation within 15 Business Days of receipt of such explanation or revised

determination that it agrees with such explanation or revised determination, or shall state its reasons for disagreement and the procedure set forth in section 9(b) of this R357-7-9, and this section 9(c) shall continue until all such determinations have been certified by the Board.

(d) The Corporation shall provide to the Board all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to make its certification in accordance with this section 9.

(10) The Board shall review the amount of Economic Development Impact reported by the Corporation in accordance with section 7 of this R357-7-9 and within 40 Business Days following receipt of the Corporation's Annual Report the Board shall either (a) approve the amount of Economic Development Impact stated in the report, or (b) reduce such amount by the amount of Economic Development Impact it determines to have been counted in more than one category.

(a) Upon approval of the amount of Economic Development Impact set forth in the report, the Board shall certify the Economic Development Impact to the Corporation.

(b) If the Board determines to make a reduction to avoid double counting, it shall notify the Corporation such determination. The Corporation shall respond in writing to the Board within 15 Business Days of receipt of such a notice from the Board. The Corporation's response shall include an explanation addressing the Board's reasons for reduction or a revised determination of the amount of Economic Development Impact and the basis therefore.

(c) The Board shall certify to the Corporation within 15 Business Days of receipt of such explanation or revised determination that it agrees with such explanation or revised determination, or shall state its reasons for reduction and the procedure set forth in section 10(b) of this R357-7-9, and this section 10(c) shall continue until all such determinations have been certified by the Board.

(d) The Corporation shall provide to the Board all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to make its certification in accordance with this section 9.

(11) The total amount of Economic Development Impact as of any Determination Date shall be the sum of the Economic Development Impact for each year through the Determination Date, determined in accordance with section 9 of this R357-7-9.

R357-7-10. Criteria for Establishing the Target Rate of Return of the Investment Portfolio.

For investment portfolios of each Utah Fund of Funds:

(1) The "Target Rate of Return" on venture capital investments of such Utah Fund of Funds is a minimum of 5%. The Corporation will submit to the Board annually a detailed accounting of the calculation of the rate of return. It is understood by the Board that returns in the early years of each Utah Fund of Funds will likely be negative.

R357-7-11. Claiming Tax Credits Represented by Tax Credit Redemption Certificates.

(1) Once certified by the Board, the holder of a Tax Credit Redemption Certificate may present such Certificate to the Commission to claim a tax credit in accordance with the following provisions:

(a) The tax credit represented by the Tax Credit Redemption Certificate shall be claimed for the tax year of the Designated Investor that begins during the Calendar Year the Board has certified such Tax Credit Redemption Certificate. The Designated Investor may submit to the Commission at any time following the date of issuance of the Tax Credit Redemption Certificate by the Board, but no later than the general filing deadline for Utah State tax returns (including extensions) of the tax year for which the redemption may be claimed.

(b) The Person claiming a refund must timely file a Utah State tax return claiming a refundable credit; and no other filing or forms or actions are necessary, and no other conditions apply, for obtaining a refund in respect of such tax credit. The Commission will manually process a tax return with a claim for refund and will pay the amount indicated on such tax return (such payment generally, but not always, made within ninety (90) days from the date for such return). If the Board has notified the Commission of the filing of a claim for refund by the Designated Investor, the Commission will take steps to expedite the refund.

(2) There is no limitation on a Person:

(a) filing more than one claim for refund with the Commission, or

(b) receiving more than one refund from the Commission, in each case, in any one Calendar Year or other twelve (12) month period.

(3) If a Person is not otherwise a Utah taxpayer, its taxable year, for purposes of these rules, shall be considered to end annually on the same date that its tax year ends for United States federal income tax purposes. For a disregarded entity that is not otherwise a Utah taxpayer, such entity may designate any date on which its taxable year ends by stating such date on the Utah tax return on which it files its claim for refund.

(4) If the Designated Investor is a corporation or other business organization or entity included in a combined Utah state tax return, and such tax return claims a tax credit, the commission will treat such tax credit as a refundable credit for the combined group.

R357-7-12. Certificate Register.

The Certificate Register detailing all transactions involving the Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates shall be held and maintained at the Office of the Utah Treasurer.

KEY: capital investments, economic development, tax credits, Utah Capital Investment Board
May 16, 2016 63N-6-203
Notice of Continuation May 22, 2019

R386. Health, Disease Control and Prevention, Epidemiology.
R386-900. Special Measures for the Operation of Syringe Exchange Programs.
R386-900-1. Authority.

This rule is authorized under Utah Code 26-7-8.

R386-900-2. Purpose.

This rule establishes operating and reporting requirements required of an entity operating a syringe exchange pursuant to 26-7-8.

R386-900-3. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health Bureau of Epidemiology Prevention, Treatment and Care Program.

(2) "Syringe exchange" is defined in 26-7-8.

(3) "Operating entity" is defined in 26-7-8.

(4) "HIV" human immunodeficiency virus.

(5) "HCV" hepatitis C virus.

(6) "HBV" hepatitis B virus.

(7) "Opiate antagonist" is defined by Chapter 55, Opiate Overdose Response Act.

R386-900-4. Operating Requirements.

(1) An operating entity intending to begin syringe exchange programming within a local community shall meet with local stakeholders, which should include: public health, mental health, substance abuse, law enforcement, local governing body, community councils, etc. This meeting should provide education on the purpose and goals of a syringe exchange program, syringe exchange protocols, awareness of operating entity's plans and community partnerships and will assess community readiness, norms, needs and parameters for implementing syringe exchange in that area. The operating entity shall provide UDOH meeting summary(s) which should include: participants, what was discussed, outcomes and plans for implementation. This documentation must be submitted for each major area where exchange will be conducted upon enrollment and submitted 30 days prior to the initiation of syringe exchange program operation in a new area.

(2) An operating entity shall utilize the department's enrollment form to provide written notice of intent to conduct syringe exchange activities to the department 15 days prior to conducting syringe exchange activities. If an operating entity discontinues syringe exchange activities, written notice shall also be submitted utilizing the department's report form within 15 days of termination of activities to the department.

(3) An operating entity must submit a safety protocol to the department for the prevention of needlestick and sharps injury before initiating syringe exchange activities.

(4) An operating entity shall submit a sharps disposal plan to the department. Sharps disposal is the financial responsibility of the entity operating and responsible for the syringe exchange program.

(5) An operating entity shall facilitate the exchange of an individuals used syringes by providing a disposable, medical grade sharps container for the disposal of used syringes.

(6) The operating entity shall exchange one or more new syringes in sealed sterile packages and may provide other clean and new prevention materials to the individual free of charge.

(7) As available, the department will provide syringes, prevention materials, education materials, and other resources to entities operating a syringe exchange program.

(8) An operating entity must provide and make available to all clients of the syringe exchange program verbal and written instruction on:

(a) Methods for preventing the transmission of blood borne pathogens, including HIV, HBV and HCV;

(b) Information and referral to drug and alcohol treatment;

(c) Information and referral for HIV and HCV testing; and

(d) How and where to obtain an opiate antagonist.

R386-900-5. Reporting Requirements.

(1) All entities operating a syringe exchange program shall report aggregate data elements in accordance to 26-7-8 to the department on a quarterly basis, utilizing the format provided by the department which is to include:

(a) Number of individuals who have exchanged syringes,

(b) A self-reported or approximated number of used syringes exchanged for new syringes,

(c) Number of new syringes provided in exchange for used syringes,

(d) Educational materials distributed; and

(e) Number of referrals provided.

R386-900-6. Penalty.

(1) Any person who violates any provision of R386-900 may be assessed a penalty as provided in section 26-23-6.

R386-900-7. Official References.

(1) Centers for Disease Control and Prevention (CDC), 2016, Program Guidance for Implementing Certain Components of Syringe Services Programs.

(2) Federal Register, Health and Human Services Department, 2011, Determination That a Demonstration Needle Exchange Program Would be Effective in Reducing Drug Abuse and the Risk of Acquired Immune Deficiency Syndrome Infection Among Intravenous Drug Users.

(3) Harm Reduction Coalition, 2006, Syringe Exchange Programs and Hepatitis C.

(4) Harm Reduction Coalition, 2006, Syringe Exchange Programs: Reducing the Risks of Needlestick Injuries.

(5) Substance Abuse and Mental Health Services Administration (SAMHSA), Summary of Syringe Exchange Program Studies.

(6) United States Department of Health and Human Services (HHS), 2016, Implementation Guidance to Support Certain Components of Syringe Services Programs.

(7) World Health Organization (WHO), 2004, Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users.

KEY: syringe exchange programs, needles, syringes
May 15, 2019 **26-7-8**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-7A. Medicaid Certification of New Nursing Facilities.
R414-7A-1. Administrative Proceedings.

Adjudicative proceedings for decisions by the Division of Medicaid and Health Financing, made pursuant to Section 26-18-504, are informal and conducted in accordance with Rule R410-14.

KEY: Medicaid
June 3, 2005 26-1-5
Notice of Continuation May 24, 2019 26-18-504(2)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-31. Inpatient Psychiatric Services for Individuals Under Age 21.
R414-31-1. Introduction and Authority.

(1) Except for certain age groups, Medicaid excludes coverage of patients in an institution for mental disease. The State has elected to cover these inpatient psychiatric services for individuals under age 21 in accordance with the conditions set forth below.

(2) 42 USC 1396d(a)(16) and (h) authorizes the provision of this service under a state's Medicaid program.

R414-31-2. Client Eligibility Requirements.

Categorically and medically needy Medicaid recipients are eligible for this service if the service is provided before the recipient reaches age 21 or, if the recipient was receiving the services immediately before the recipient reached age 21, before the earlier of the following: (1) the date the recipient no longer requires the services; or (2) the date the recipient reaches age 22.

R414-31-3. Program Access Requirements.

(1) Before admission for inpatient psychiatric services or before authorization for Medicaid payment, a facility physician must make a medical evaluation of the recipient's need for care in the hospital and certify that inpatient services are needed.

(2) The certification must document that:

(a) ambulatory care resources available in the community do not meet the treatment needs of the recipient;

(b) proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(c) the services can reasonably be expected to improve the recipient's condition or prevent further regression so that services will no longer be needed.

(3) The Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Division of Health Systems Improvement, under the Department of Health, reviews the medical evaluation and certification and determines that the client meets certification of need requirements.

R414-31-4. Service Coverage.

(1) Services must be provided under the direction of a physician and must be based on a plan of care that includes an integrated program of therapies, activities, and experiences designed to meet the recipient's treatment objectives. The plan of care must be a written plan developed for each recipient to improve the recipient's condition to the extent that inpatient care is no longer necessary.

(2) At the appropriate time, the physician must develop post-discharge plans and coordination of inpatient services with partial discharge plans and related community services to ensure continuity of care with the recipient's treatment objectives.

R414-31-5. Qualified Providers.

Inpatient psychiatric services for recipients under age 21 are provided only by the Utah State Hospital.

R414-31-6. Reimbursement for Services.

The Department pays the lower amount of costs or charges and uses Medicare regulations to define allowable costs.

KEY: Medicaid
November 24, 2009 **26-1-5**

Notice of Continuation May 31, 2019 **26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia.
R414-49-1. Introduction.

The Medicaid Dental Program provides a scope of dental services for Medicaid recipients in accordance with the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

R414-49-2. Definitions.

In addition to the definitions in Rule R414-1 and the Utah Medicaid Provider Manual, Section I: General Information, the following definitions apply to this rule:

(a) "Anterior tooth" means tooth numbers 6 through 11; 22 through 27; C through H; and M through R.

(b) "Dental services" whether furnished in the office, a hospital, a skilled nursing facility, or elsewhere, means covered services performed within the scope of the Medicaid enrolled dental provider's license as defined in Title 58, Occupations and Professions.

(c) "Posterior tooth" means tooth numbers 1 through 5; 12 through 21; 28 through 32; A through B; I through L; and S through T.

R414-49-3. Early and Periodic Screening, Diagnostic and Treatment (EPSDT).

This section defines the scope of dental services available to members who are eligible under the EPSDT program, and includes comprehensive and preventive health care services.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(2) Coverage and Limitations.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third-molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

(a) Composite resin fillings on posterior teeth;

(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;

(c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

(d) Fixed bridges or pontics;

(e) All types of dental implants;

(f) Tooth transplantation;

(g) Ridge augmentation;

(h) Osteotomies;

(i) Vestibuloplasty;

(j) Alveoloplasty;

(k) Occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

(l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

(m) Procedures such as arthrostomy, meniscectomy, or condylectomy;

(n) Nitrous oxide analgesia;

(o) House calls;

(p) Consultation or second opinions not requested by Medicaid;

(q) Services provided without prior authorization;

(r) General anesthesia for removal of an erupted tooth;

(s) Oral sedation for behavior management;

(t) Temporary dentures or temporary stayplate partial dentures;

(u) Limited orthodontic treatment, including removable appliance therapies;

(v) Removable appliances in conjunction with fixed banded treatment; and

(w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) Dental Spend-Ups.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:

(i) Covered amalgam fillings to non-covered composite resin fillings;

(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or

(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab-prepared facings).

R414-49-4. Pregnant Members.

This section defines the scope of dental services available to pregnant members who are eligible for Traditional Medicaid. Dental services extend for a 60-day period after the pregnancy ends and any remaining days in the month in which the 60 days lapse.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(2) Coverage and Limitations.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia

Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

(a) Composite resin fillings on posterior teeth;

(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;

(c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

(d) Fixed bridges or pontics;

(e) All types of dental implants;

(f) Tooth transplantation;

(g) Ridge augmentation;

(h) Osteotomies;

(i) Vestibuloplasty;

(j) Alveoloplasty;

(k) Occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

(l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

(m) Procedures such as arthrostomy, meniscectomy, or condylectomy;

(n) Nitrous oxide analgesia;

(o) House calls;

(p) Consultation or second opinions not requested by Medicaid;

(q) Services provided without prior authorization;

(r) General anesthesia for removal of an erupted tooth;

(s) Oral sedation for behavior management;

(t) Temporary dentures or temporary stayplate partial dentures;

(u) Limited orthodontic treatment, including removable appliance therapies;

(v) Removable appliances in conjunction with fixed banded treatment; and

(w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) Dental Spend-Ups.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:

(i) Covered amalgam fillings to non-covered composite resin fillings;

(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or

(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab-prepared facings).

R414-49-5. Blind or Disabled Members.

This section defines the scope of dental services available to blind or disabled members eligible for Traditional Medicaid who are 18 years of age or older, as defined in Subsection 1614(a) of the Social Security Act. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(2) Coverage and Limitations.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

(a) Composite resin fillings on posterior teeth;

(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;

(c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

(d) Fixed bridges or pontics;

(e) All types of dental implants;

(f) Tooth transplantation;

(g) Ridge augmentation;

(h) Osteotomies;

(i) Vestibuloplasty;

(j) Alveoloplasty;

(k) Occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

(l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

(m) Procedures such as arthrostomy, meniscectomy, or condylectomy;

(n) Nitrous oxide analgesia;

(o) House calls;

(p) Consultation or second opinions not requested by Medicaid;

(q) Services provided without prior authorization;

(r) General anesthesia for removal of an erupted tooth;

(s) Oral sedation for behavior management;
(t) Temporary dentures or temporary stayplate partial dentures;
(u) Limited orthodontic treatment, including removable appliance therapies;
(v) Removable appliances in conjunction with fixed banded treatment; and
(w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.
(4) Dental Spend-Ups.
(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:
(i) Covered amalgam fillings to non-covered composite resin fillings;
(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or
(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab-prepared facings).

R414-49-6. Targeted Adult Medicaid (TAM).
This section defines the scope of dental services available to eligible Targeted Adult Medicaid members who are actively receiving treatment in a substance abuse treatment program as defined in Section 62A-2-101, licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.
(1) Program Access Requirements.
(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.
(b) Dental services for this population are provided through the University of Utah School of Dentistry (SOD).
(c) Before performing any dental services, SOD shall obtain verification of active treatment for substance use disorder (SUD) from the substance abuse treatment program. The SOD shall then submit an SUD verification form to Medicaid for each eligible TAM member. The SUD verification form is available in "All Providers General Attachments" on the Utah Medicaid website at https://medicaid.utah.gov.
(2) Coverage and Limitations.
(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.
(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.
(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.
(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.
(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.
(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.
(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.
(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.
(3) Medicaid does not cover the following types of dental services:
(a) Composite resin fillings on posterior teeth;
(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;
(c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;
(d) Fixed bridges or pontics;
(e) All types of dental implants;
(f) Tooth transplantation;
(g) Ridge augmentation;
(h) Osteotomies;
(i) Vestibuloplasty;
(j) Alveoloplasty;
(k) Occlusal appliances, habit control appliances or interceptive orthodontic treatment;
(l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;
(m) Procedures such as arthrostomy, meniscectomy, or condylectomy;
(n) Nitrous oxide analgesia;
(o) House calls;
(p) Consultation or second opinions not requested by Medicaid;
(q) Services provided without prior authorization;
(r) General anesthesia for removal of an erupted tooth;
(s) Oral sedation for behavior management;
(t) Temporary dentures or temporary stayplate partial dentures;
(u) Limited orthodontic treatment, including removable appliance therapies;
(v) Removable appliances in conjunction with fixed banded treatment; and
(w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.
(4) Dental Spend-Ups.
(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:
(i) Covered amalgam fillings to non-covered composite resin fillings;
(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; and
(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab prepared facings).

R414-49-7. Emergency Dental.
This section defines the scope of dental services available to members who are otherwise eligible under the Medicaid program.
(1) Program Access Requirements.
(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.
(2) Coverage and Limitations.

(a) Emergency dental services are the treatment of a sudden and acute onset of a dental condition that requires immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental or medical health.

(b) Emergency dental service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

KEY: Medicaid
April 22, 2019 26-1-5
Notice of Continuation May 31, 2019 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-502. Nursing Facility Levels of Care.
R414-502-1. Introduction and Authority.

This rule defines the levels of care provided in nursing facilities.

R414-502-2. Definitions.

The definitions in Section R414-1-2 and Section R414-501-2 apply to this rule.

R414-502-3. Approval of Level of Care.

(1) The Department shall document that at least two of the following factors exist when it determines whether an applicant has mental or physical conditions that require the level of care provided in a nursing facility or equivalent care provided through a Medicaid Home and Community-Based Waiver program:

(a) Due to diagnosed medical conditions, the applicant requires substantial physical assistance with daily living activities above the level of verbal prompting, supervising, or setting up;

(b) The attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care; or equivalent care provided through a Medicaid Home and Community-Based Waiver program ; or

(c) The medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of a Medicaid Home and Community-Based Waiver program.

(2) The Department shall determine whether at least two of the factors described in Subsection R414-502-3(1) exist by reviewing the following clinical documentation:

(a) A current history and physical examination completed by a physician;

(b) A comprehensive resident assessment completed, coordinated and certified by a registered nurse;

(c) A social services evaluation that meets the criteria in 42 CFR 456.370 and completed by a person licensed as a social worker, or higher degree of training and licensure;

(d) A written plan of care established by a physician;

(e) A physician's written certification that the applicant requires nursing facility placement; and

(f) Documentation which indicates that all less restrictive alternatives or services to prevent or defer nursing facility care have been explored.

(3) If the Department finds that at least two of the factors described in Section R414-502-3(1) exist, the Department shall determine whether the applicant meets nursing facility level of care and is medically-approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program. Meeting medical eligibility for nursing facility services does not guarantee Medicaid payment. Financial eligibility and other Home and Community-Based Waiver targeting criteria shall apply.

R414-502-4. Approval of Differential Levels of Care.

The Department shall pay nursing facilities a rate differential for residents who meet nursing facility level of care and any of the criteria listed in Sections R414-502-5 through R414-502-7.

R414-502-5. Criteria for Intensive Skilled Care.

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid reimbursement for intensive skilled care:

(1) The applicant meets the need for skilled services provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the Centers for Medicare and Medicaid Services to furnish skilled nursing facility care in the Medicare program.

(2) The following routine skilled care does not qualify as intensive skilled care in making a determination under Section R414-502-5:

(a) Skilled nursing services described in 42 CFR 409.33(b);

(b) Skilled rehabilitation services described in 42 CFR 409.33(c);

(c) Routine monitoring of medical gases after a therapy regimen;

(d) Routine enteral tube and gastronomy feedings; and

(e) Routine isolation room and techniques.

(3) The applicant has exhausted Medicare benefits or has been denied by Medicare for other reasons other than level of care requirements.

(4) The applicant requires and receives at least five additional hours of direct licensed professional nursing care daily, including a combination of specialized care and services, and assessment by a registered nurse and 24-hour observation.

(5) The applicant meets criteria for intensive skilled care if the attending physician makes any one of the following determinations:

(a) There is no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility; or

(b) The applicant's condition requires physician follow-up at the nursing facility at least once every 30 days;

(c) An interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential; and

(d) Except in extraordinary circumstances, the applicant has been hospitalized immediately before admission to the nursing facility.

(6) The applicant has continuously required skilled care, either through Medicare or Medicaid, since admission to the nursing facility.

(7) If the attending physician has written and signed progress notes at the time of each physician visit that reflect the current medical condition of the applicant.

(8) An applicant who was previously approved for intensive skilled care and later downgraded to a lower care level may return to intensive skilled care instead of being hospitalized in an acute care setting if :

(a) A complication occurs that involves the condition for which the applicant was originally approved for intensive skilled care; and

(b) It has been less than 30 days since the termination of the previous intensive skilled care.

R414-502-6. Criteria for Behaviorally Complex Program.

In order for the Department to authorize Medicaid coverage for the Behaviorally Complex Program, a nursing facility must:

(1) Demonstrate that the resident has a history of persistent disruptive behavior that is not easily altered and requires an increase in resources from nursing facility staff as documented by one or more of the following behaviors:

(a) The resident engages in wandering behavior with no rational purpose, is oblivious to his needs or safety, and places his self and others at significant risk of physical illness or injury;

(b) The resident engages in verbally abusive behavior

where he threatens, screams or curses at others;

(c) The resident presents a threat of hitting, shoving, scratching, or sexually abusing other residents.

(d) The resident engages in socially inappropriate and disruptive behavior by doing of one of the following:

(i) Makes disruptive sounds, noises and screams;

(ii) Engages in self-abusive acts;

(iii) Inappropriate sexual behavior;

(iv) Disrobes in public;

(v) Smears or throws food or feces;

(vi) Hoards; and

(vii) rummages through others belongings.

(e) The resident refuses assistance with medication administration or activities of daily living ; or

(f) The resident's behavior interferes significantly with the stability of the living environment and interferes with other residents' ability to participate in activities or engage in social interactions.

(2) Demonstrate that an appropriate behavioral intervention program has been developed for the resident.

(a) All behavior intervention programs shall:

(b) Be a precisely planned systematic application of the methods and experimental findings of behavioral science with the intent to reduce observable negative behaviors;

(c) Incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;

(d) Be conducted following only identification and, if feasible, remediation of environmental and social factors that likely precipitate or reinforce the inappropriate behavior;

(e) Incorporate a process for identifying and reinforcing a desirable replacement behavior;

(f) Include a program data sheet; and

(g) Include a behavior baseline profile that consists of all of the following:

(i) Applicant name;

(ii) Date, time, location, and specific description of the undesirable behavior;

(iii) Persons and conditions present before and at the time of the undesirable behavior;

(iv) Interventions for the undesirable behavior and their results; and

(v) Recommendations for future action.

(h) The interdisciplinary team shall include a behavior intervention plan that consists of all of the following:

(i) The applicant's name, the date the plan is prepared, and when the plan will be used;

(ii) The objectives stated in terms of specific behaviors;

(iii) The names, titles and signatures of persons responsible for conducting the plan; and

(iv) The methods and frequency of data collection and review.

R414-502-7. Criteria for Specialized Rehabilitative Services for Residents with Intellectual Disabilities.

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an applicant for specialized rehabilitative services:

(1) The nursing facility must arrange for specialized rehabilitative services for clients with intellectual disabilities who are residing in nursing homes;

(2) The individual must meet the criteria for Nursing Facility III Level of Care (excluding residents who receive the intensive skilled or behaviorally complex rate);

(3) The individual must have a Preadmission Screening and Resident Review (PASRR) Level II Evaluation that indicates the resident needs specialized rehabilitation. The nursing facility must assure that needed services are provided under the written order of a physician by qualified personnel; and

(4) The nursing facility must document the need for specialized rehabilitative services in the resident's comprehensive plan of care.

(5) Specialized rehabilitative services include but are not limited to:

(a) Medication management and monitoring effectiveness and side effects of medications prescribed to change inappropriate behavior or to alter manifestations of psychiatric illness;

(b) The provision of a structured environment to include structured socialization activities to diminish tendencies toward isolation and withdrawal;

(c) Development, maintenance, and implementation of programs designed to teach individuals daily living skills that include but are not limited to:

(i) Grooming and personal hygiene;

(ii) Mobility;

(iii) Nutrition, health and self-feeding;

(iv) Medication management;

(v) Mental health education;

(vi) Money management;

(vii) Maintenance of the living environment; and

(viii) Occupational, speech, and physical therapy obtained from providers outside the nursing facility who specialize in providing services for persons with intellectual disabilities at the intensity level necessary to attain the desired goals of independence and self-determination.

(d) Formal behavior modification programs;

(e) Development of appropriate person support networks.

R414-502-8. Criteria for Intermediate Care Facility for Persons with Intellectual Disability.

An intermediate care facility for persons with intellectual disabilities (ICF/ID) must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an individual who resides in an ICF/ID.

(1) The individual must have a diagnosis of:

(a) An intellectual disability in accordance with 42 CFR 483.102(b)(3); or

(b) A condition closely related to intellectual disability in accordance with 42 CFR 435.1010.

(2) For individuals seven years of age and older, the presence of a diagnosis alone is not sufficient to qualify for admission to an intermediate care facility for persons with intellectual disabilities. The diagnosis identified in Subsection R414-502-8(1) must result in documented substantial functional limitations in three or more of the following seven areas of major life activity that include:

(a) Self-care;

(i) The individual requires assistance, training and supervision to eat, dress, groom, bathe, or use the toilet.

(b) Receptive and expressive language;

(i) The individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of requests, or cannot follow two-step instructions.

(c) Learning;

(i) The individual has a valid diagnosis of an intellectual disability based on criteria found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition, 1994.

(d) Mobility;

(i) The individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without an assistive device.

(e) Self-direction;

(i) The individual is seven through 17 years of age and significantly at risk in making age appropriate decisions. Or, in the case of an adult, cannot provide informed consent for medical care, personal safety, or for legal, financial, rehabilitative, and residential issues, and has been declared legally incompetent. The individual is a danger to himself or others without supervision.

(f) The capacity for independent living;

(i) The individual who is seven through 17 years of age cannot locate and use a telephone, cross the street safely, or understand that it is unsafe to accept rides, food or money from strangers, or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(g) Economic self-sufficiency (not applicable to children under 18 years of age);

(i) The individual receives disability benefits, cannot work more than 20 hours a week, or is paid less than minimum wage without employment support.

(3) The Department considers a child under the age of seven to be at risk for functional limitation in three or more areas of major life activity. The child may satisfy this criteria if the child has been with an intellectual disability or a condition closely related to intellectual disability. The Department does not require separate documentation of the limitations defined in Subsection R414-502-8(2) until the child turns seven years of age.

(4) To meet the criteria of a condition closely related to an intellectual disability, an individual must manifest the condition before the individual turns 22 years of age and the condition must be likely to continue. A diagnosis may qualify as a condition closely related to an intellectual disability only if the child meets the criteria defined in 42 CFR 435.1010. The following is a list of diagnoses the Department considers to be conditions closely related to an intellectual disability:

(a) Cerebral palsy. The Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate they have functional limitations as described in Subsection R414-502-8(2);

(b) Epilepsy. The Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate they have functional limitations as described in Subsection R414-502-8(2);

(c) Autism Spectrum Disorder. The Department requires an individual to meet the following criteria under this category:

(i) Persistent deficits in social communication and social interaction across contexts, not accounted for by general developmental delays, and manifests by all three of the following:

(A) Deficits in social-emotional reciprocity, ranging from abnormal social approach and failure of normal back and forth conversation through reduced sharing of interests, emotions, and affect and response to total lack of initiation of social interaction;

(B) Deficits in non-verbal communicative behaviors used for social interaction, ranging from poorly integrated verbal and non-verbal communication through abnormalities in eye contact and body language, or deficits in understanding and use of non-verbal communication to total lack of facial expression or gestures;

(C) Deficits in developing and maintaining relationships appropriate to developmental level (beyond those with caregivers), ranging from difficulties adjusting behavior to suit different social contexts through difficulties in sharing imaginative play, and in making friends to an apparent absence of interest in people.

(ii) Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following:

(A) Stereotyped or repetitive speech, motor movements, or use of objects (such as simple motor stereotypies, echolalia, repetitive use of objects, or idiosyncratic phrases);

(B) Excessive adherence to routines, ritualized patterns of verbal or non-verbal behavior, or excessive resistance to change (such as motoric rituals, insistence on same route or food, repetitive questioning or extreme distress at small changes);

(C) Highly restricted, fixated interests with abnormal intensity or focus (such as strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests);

(D) Hyper or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (such as apparent indifference to pain, heat and cold, adverse response to specific sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

(iii) Symptoms must be present in early childhood (but may not become fully manifest until social demands exceed limited capacities).

(iv) Symptoms together limit and impair everyday functioning.

(d) Severe brain injury. May be the result of an acquired brain injury, traumatic brain injury, stroke, anoxia, meningitis;

(e) Fetal alcohol syndrome;

(f) Chromosomal disorders such as Down syndrome, fragile x syndrome, and Prader-Willi syndrome;

(g) Other genetic disorders. Examples include Williams syndrome, spina bifida, and phenylketonuria.

(5) The following conditions do not qualify as conditions closely related to intellectual disabilities. Nevertheless, the Department may consider a person with any of these conditions if there is a simultaneous occurrence of a qualifying condition as cited in Subsection R414-502-8(1)(a) and (b):

(a) Learning disability;

(b) Behavior or conduct disorders;

(c) Substance abuse;

(d) Hearing impairment or vision impairment;

(e) Mental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;

(f) Borderline intellectual functioning, a related condition that does not result in an intellectual impairment, developmental delay, or "at risk" designations;

(g) Physical problems such as multiple sclerosis, muscular dystrophy, spinal cord injuries, and amputations;

(h) Medical health problems such as cancer, acquired immune deficiency syndrome, and terminal illnesses;

(i) Neurological problems not associated with intellectual deficits. Examples include Tourette's syndrome, fetal alcohol effects, and non-verbal learning disability;

(j) Mild traumatic brain injury such as minimal brain injury and post-concussion syndrome.

(6) An individual who was admitted to an ICF/ID before August 27, 2009, is eligible for continued stay as long as the individual continues to meet the requirements in effect before that date. A resident who was admitted to an ICF/ID before August 27, 2009, is only required to meet the revised eligibility criteria when there is a break in stay wherein the individual resides in a setting that is not a Medicaid-certified ICF/ID nursing facility or hospital.

(7) Before admission to an ICF/ID, the facility must provide each potential resident with a two-sided fact sheet (Form IFS 10) that offers information about ICFs/ID and the Community Supports Waiver for People with Intellectual Disabilities and Other Related Conditions. Each resident's record must contain an acknowledgement (Form IFS 20)

signed by the resident or legal representative, which verifies that the facility provided the Form IFS 10 before admission.

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October 11, 2012 26-1-5
Notice of Continuation May 31, 2019 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-503. Preadmission Screening and Resident Review.
R414-503-1. Introduction and Authority.

This rule implements 42 U.S.C. 1396r(b)(3) and (e)(7) and Pub. L. No. 104 315, which require preadmission screening and resident review (PASRR) of nursing facility residents with serious mental illness or intellectual disability. This rule applies to all Medicare/Medicaid-certified nursing facility admissions irrespective of the payment source of an individual's nursing facility services.

R414-503-2. Definitions.

In addition to the definitions in Section R414-1-2 and Section R414-501-2, the following definitions apply:

(1) "Break in Stay" occurs when a resident of a Medicare/Medicaid-certified nursing facility:

(a) voluntarily leaves against medical advice for more than two consecutive days;

(b) fails to return within two consecutive days after an authorized leave of absence;

(c) discharges into a community setting; or

(d) is admitted to the Utah State Hospital, to a civil or forensic bed (not the Adult Recovery Treatment Center).

(2) "Intellectual Disability" is the equivalent term for "Mental Retardation" in federal law.

R414-503-3. PASRR Level I Screening for All Persons.

The purpose of a PASRR Level I Screening is for a health care professional to identify any person with a serious mental illness, intellectual disability or other related condition so the professional may consider that person for admission to a Medicare/Medicaid-certified nursing facility. The health care professional who conducts the Level I Screening shall refer the person for a Level II Evaluation if the professional determines that the person has a serious mental illness, intellectual disability or other related condition.

(1) The health care professional shall complete a Level I Screening before any Medicare/Medicaid-certified nursing facility admission.

(2) The health care professional shall complete the Level I Screening on a form supplied by the Department.

(3) The health care professional shall sign and date the Level I Screening.

(4) The nursing facility shall revise the Level I Screening if there is a significant change in the person's condition.

(5) The Department shall require Level I Screening for all persons even if a person cannot cooperate or participate in Level I Screening due to delirium or other emergency circumstances. The health care professional shall complete the Level I Screening by using available medical information or other outside information.

R414-503-4. PASRR Level II Evaluation Criteria.

The purpose of a Level II Evaluation is to avoid unnecessary or inappropriate nursing facility admission of persons with serious mental illness or intellectual disabilities or related conditions. The Level II evaluation ensures that persons with serious mental illness or intellectual disabilities or related conditions are recommended for specialized services when a health care professional determines there is a need for specialized services during the evaluation process. The Department bases Level II Evaluations on the criteria set forth in 42 CFR 483.130. Level II Evaluations must address the level of nursing services, specialized services, and specialized rehabilitative services needed for the patient.

(1) The health care professional who completes the Level I screening shall refer the person to a contracted mental health PASRR Evaluator for the Level II Evaluation if the Level I Screening indicates the person meets all of the following criteria:

(a) The person has a serious mental illness as defined by the State Mental Health Authority and identified by the Level I Screening;

(b) The diagnosis of mental illness falls within the diagnostic groupings as described in the Diagnostic and Statistical Manual; and

(c) In addition to the criteria listed in Subsection R414-503-4(1)(a)(b), the person meets any one of the following criteria:

(i) The person has undergone psychiatric treatment at least twice in the last two years that is more intensive than outpatient care;

(ii) Due to a significant disruption in the person's normal living situation, the person requires supportive services to maintain the current level of functioning at home or in a residential treatment center; or

(iii) The person requires intervention by housing or law enforcement officials.

(2) The health care professional who completes the Level I screening shall refer the person to the Intellectual Disability or Related Condition Authority for the Level II Evaluation if the Level I Screening indicates the person meets at least one of the following criteria:

(a) The person has received a diagnosis of an intellectual disability or related condition;

(b) The person has received a diagnosis of epilepsy or seizure disorder with onset before 22 years of age;

(c) The person has a history of intellectual disability or related condition, or an indication of cognitive or behavioral patterns that indicate the person has an intellectual disability or related condition; or

(d) The person is referred by any agency that specializes in the care of persons with intellectual disabilities or related conditions.

(3) The health care professional who completes the Level I screening shall refer the person to both the contracted mental health PASRR Evaluator and the Intellectual Disability or Related Condition Authority if the person meets the criteria for Subsection R414-503-4(1) and (2).

(4) The health care professional who completes the Level I screening shall provide written notice of a Level II Evaluation referral to the person, the person's legal representative, and the prospective nursing facility.

(5) If the person does not meet the criteria in Subsection R414-503-4(1) or (2), the Department may not require a further PASRR Evaluation unless there is a significant change in condition.

R414-503-5. PASRR Level II Exemptions.

The Department may not require a Level II Evaluation for any of the following reasons:

(1) The person does not meet the criteria listed in Subsection R414-503-4 (1) or (2);

(2) The nursing facility admits the person as a provisional admission due to delirium, an accurate diagnosis cannot be made until the delirium clears, and the nursing facility placement does not exceed seven days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the seventh day if the placement will extend beyond the seventh day.

(3) The nursing facility admits the person as a provisional admission due to an emergency situation requiring protective services, and the nursing facility placement does not exceed seven days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the seventh day if the placement will extend

beyond the seventh day.

(4) The person is admitted to a nursing facility directly from a hospital and requires nursing facility services for the condition treated in the hospital (not psychiatric treatment), and the attending physician certifies in writing before the admission that the person is likely to be discharged in less than 30 days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the 30th day if the placement will extend beyond the 30th day.

(5) The contracted mental health PASRR evaluator may terminate the Level II Evaluation at any time if the evaluator determines that the person does not have a serious mental illness. The Level II Evaluator shall document that the person does not have a serious mental illness.

(6) The person has a previous Level II Evaluation and the nursing facility readmits the person to the same or a different nursing facility following hospitalization for medical care without a break in stay. This provision does not apply if the person is hospitalized for acute psychiatric treatment. Following readmission, the nursing facility shall review and update the PASRR Level I Screening to determine whether there is a significant change in condition that requires a Level II Re-evaluation.

(7) The person has a previous Level II Evaluation and the nursing facility transfers the person to another nursing facility with or without intervening hospitalization and without a break in stay. This provision does not apply if the person is hospitalized for psychiatric treatment. Following transfer, the nursing facility shall review and update the Level I Screening to determine whether there is a significant change in condition that requires a Level II Re-evaluation.

R414-503-6. PASRR Level II Categorical Determinations.

The Level II Evaluator may make one of the following categorical determinations:

(1) Convalescent Care - The person is eligible for convalescent care for an acute physical illness that requires hospitalization and does not meet the criteria for an exempt hospital discharge, (which, as specified in 42 CFR 483.106(b)(2) is not subject to preadmission screening). The convalescent care determination only applies if the person is at a hospital for a medical condition and is going to the Medicare/Medicaid-certified nursing facility for the same medical condition. The Convalescent Care Categorical Determination is valid for up to 120 days. The nursing facility shall refer the person for a Level II Evaluation before midnight on the 120th day if the placement will extend beyond the 120th day.

(2) Short-term Stay - The person is eligible for a short-term stay for an acute physical illness in which the person is seeking admission to the nursing facility directly from a community setting. The Short-term Stay Categorical Determination is valid for a maximum of 120 days. The nursing facility shall refer the person for a Level II Evaluation before the end of the number of days specified if the placement will extend beyond the number of days specified by the State Mental Health Authority or Intellectual Disabilities Authority.

(3) Terminal Illness - The person is eligible for a stay related to a terminal illness when a physician provides a written statement that the person has a terminal illness. If the individual is not receiving hospice services at the time of the Level II Evaluation, an individualized Level II Evaluation is required.

(4) Severe Physical Illness - The person is eligible for a Severe Physical Illness Categorical Determination when the person has a level of impairment so severe that the individual cannot be expected to benefit from specialized services. This level of impairment includes conditions such as:

(a) being in a coma;

(b) being ventilator dependent; or

(c) functioning at a brain stem level.

(5) Dementia and Intellectual Disability - The State Intellectual Disability Authority or delegated agency (not Level I screeners) may make categorical determinations that individuals with dementia, which exists in combination with intellectual disability or a related condition, do not need specialized services.

(6) Dementia and Mental Illness -The health care professional may terminate the PASRR Level II Evaluation if the health care professional discovers that the person has dementia and a serious mental illness during the evaluation process, and there is evidence that dementia is the primary condition. For example, the dementia has resulted in increased functional deficits and is the primary reason for requiring nursing facility services.

R414-503-7. Individualized Level II Determinations.

The Level II Evaluator may make one of the following individualized determinations:

(1) The person does not need nursing facility services. This determination disqualifies the person from admission to a Medicare/Medicaid-certified nursing facility.

(2) The person does not need nursing facility services but does need specialized services as defined by the State Mental Health Authority or Intellectual Disability or Related Condition Authority. This determination disqualifies the person from admission to a Medicare/Medicaid- certified nursing facility.

(3) The person needs nursing facility services but not specialized services. This determination qualifies the person for admission to a Medicare/Medicaid-certified nursing facility.

(4) The person needs nursing facility services and requires specialized services. The Level II Evaluation will specify the specialized services that are needed. This determination qualifies the person for admission to a Medicare/Medicaid-certified nursing facility. The State Mental Health Authority or the Intellectual Disabilities or Related Conditions Authority shall provide a copy of the Level II Evaluation and findings to the person, the person's legal representative, the nursing facility, and the attending physician.

(5) Out-of-State Arrangement for Payment: The state in which the person is a resident (or would be a resident at the time the person becomes eligible for Medicaid) as defined in 42 CFR 435.403 shall pay for the Level II Evaluation in accordance with 42 CFR 431.52(b).

(6) The nursing facility, in consultation with the person and his legal representative, shall arrange for a safe and orderly discharge from the nursing facility, and shall assist with linking the person to supportive services and preparing the person for discharge if the person no longer meets the medical criteria for nursing facility services, or a Level II Evaluation disqualifies the person as no longer eligible for nursing facility placement.

R414-503-8. Penalties.

A nursing facility may not admit a patient until the health care professional completes the PASRR Level I Screening, and if necessary, the PASRR Level II Evaluation and Determination, finding that the patient is eligible for nursing facility services. The Department may not reimburse a nursing facility for any days in which the facility admits a patient before completion of the PASRR process.

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R434. Health, Family Health and Preparedness, Primary Care and Rural Health.
R434-40. Utah Health Care Workforce Financial Assistance Program Rules.
R434-40-1. Purpose.

This rule implements the Utah Health Care Workforce Financial Assistance Program Act, Utah Code, Title 26, Chapter 46; which governs the award of grant funds to geriatric professionals and health care professionals to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become nurse educators in exchange for serving for a specified period of time in a underserved area of the state.

R434-40-2. Authority.

This rule is required by Subsections 26-46-102(3) and 26-46-103(6)(a), and is promulgated under the authority of Section 26-1-5.

R434-40-3. Definitions.

The definitions as they appear in Section 26-46-101 apply. In addition:

(1) "Applicant" means an individual who submits a completed application and meets the application requirements established by the Department for a loan repayment or scholarship grant under the act.

(2) "Approved site" means a site approved by the Department that meets the eligibility criteria established in this rule and that is:

(a) within an underserved area where health care is provided and the majority of patients served are medically underserved due to lack of health care insurance, unwillingness of existing geriatric professional and health care professionals to accept patients covered by government health programs, or other economic, cultural, or language barriers to health care access; or

(b) that is a Utah nursing school or training institution that provides a nursing education course of study to prepare persons for the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act; has a shortage of nurse educator faculty; and meets the criteria established by the Department.

(3) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section 26-1-7.

(4) "Dentist" means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, to practice dentistry.

(5) "Department" means the Utah Department of Health.

(6) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(7) "Educational loan" means a commercial, government, or government-guaranteed loan taken to pay educational expenses.

(8) "Geriatric" means individuals 65 years old and older.

(9) "Geriatric professional" is further defined to mean an individual who has successfully completed one or more of the following:

a. graduate level certification in gerontology from a nationally accredited certifying organization or transcripted program of an accredited academic institution;

b. graduate degree in gerontology;

c. additional training focused on the geriatric or gerontological aspects of the professional's discipline. Additional training may include, but is not limited to, internship, practicum, preceptorship, residency, or fellowship.

(10) "Grant" means a grant of funds under a grant agreement.

(11) "Loan repayment" means a grant of funds under a grant to defray educational loans in exchange for service for a specified period of time at an approved site.

(12) "Mental health therapist" means an individual licensed under:

(a) Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act; or

(b) Title 58, Chapter 67, Utah Medical Practice Act, as a physician and surgeon, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as an osteopathic physician and surgeon who is engaged in the practice of mental health therapy.

(13) "Nurse" means an individual licensed to practice nursing in the state under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(14) "Nurse educator" means a nurse employed by a Utah school of nursing providing nursing education to individuals leading to licensure or certification as a nurse.

(15) "Occupational Therapist" means an individual licensed to practice in the state under Title 58, Chapter 42a, Occupational Therapy Practice Act.

(16) "Pharmacist" means an individual licensed to practice in the state under Title 58, Chapter 17b, Pharmacy Practice Act.

(17) "Physical Therapist" means an individual licensed to practice in the state under Title 58, Chapter 24b, Physical Therapy Practice Act.

(18) "Physician" means an individual licensed to practice in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(19) "Physician assistant" means an individual licensed to practice in the state under Title 58, Chapter 70a, Physician Assistant Practice Act.

(20) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for geriatric professional and health care professionals licensure and as required by this rule.

(21) "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under the act.

(22) "Scholarship" means a grant of funds for educational expenses given to an individual under a grant agreement where the individual agrees to become a nurse educator in exchange for service for a specified period of time at an approved site that is a Utah nursing school or training institution.

(23) "Service obligation" means professional service rendered at an approved site for a minimum of two years in exchange for a scholarship or loan repayment grant.

R434-40-4. Geriatric Professionals and Health Care Professionals Loan Repayment Grants -- Terms and Service.

(1) To increase the number of geriatric professionals and health care professionals in underserved areas of the state, the Department may provide loan repayment grants to geriatric professional and health care professionals to repay loans taken for educational expenses in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Loan repayment grants may be given only to repay bona fide loans taken by a geriatric professional and health care professional for educational expenses incurred while pursuing an education at an institution that awards a degree that qualifies a geriatric professional and health care professional to practice in his field.

(3) Loan repayment grants under this section may not:

(a) be used to satisfy other obligations owed by the geriatric professional and health care professional under any similar program and may not be used to repay a loan that is in default at the time of application; or

(b) be in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.

(4) The Department may not disburse any grant monies under the act until the recipient has performed at least six months of service at the approved site.

R434-40-5. Health Care Professionals Scholarship Grants -- Terms and Service.

(1) To increase the number of nurse educators in underserved areas in the state, the Department may provide scholarship grants to individuals seeking to become nurse educators in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Scholarship grants may be given to pay educational expenses while pursuing an education at an institution accredited by the National League of Nursing that provides training leading to the award of a final degree that qualifies the applicant to become a nurse educator in the state.

(3) Scholarship grants given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship grant recipients shall seek a course of education following a schedule of at least a minimum number of course hours per year as set by the Department which leads to receipt of a degree or completion of specified additional course work in a number of years as established by the Department.

R434-40-6. Loan Repayment Grant Administration.

(1) The Department may award loan repayment grants to repay loans taken for geriatric professionals' and health care professionals' educational expenses. The Department may consider committee recommendations in awarding loan repayment grants.

(2) As requested by the Department, a loan repayment grant recipient shall provide information reasonably necessary for administration of the program.

(3) The Department shall determine the total amount of the loan repayment grant.

(4) The loan repayment grant recipient may not enter into any other similar contract until the recipient satisfies the service obligation described in the grant agreement.

(5) The Department may approve payment to a loan repayment grant recipient for increased federal, state, and local taxes caused by receipt of the loan repayment grant.

(6) The Department shall not pay for an educational loan of a loan repayment grant applicant who is in default at the time of an application.

(7) Before receiving a loan repayment grant, the applicant must enter into a grant agreement with the Department that binds him to the terms of the program.

(8) A loan repayment grant recipient must have a permanent, unrestricted license to practice in his health care specialty in Utah before his first day of service under the grant agreement.

(9) Prior to beginning to fulfill his service obligation, a loan repayment grant recipient must obtain approval from the Department, of the site where he may complete his service obligation.

(10) A loan repayment grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

R434-40-7. Scholarship Grant Administration.

(1) The Department may award scholarship grant funds to an applicant for a maximum of four years or until earning the nursing postgraduate degree. The Department may consider committee recommendations in awarding scholarship grants.

(2) The Department may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(3) The scholarship grant recipient may not enter into a scholarship agreement other than with the program established in Section 26-46-1 until the service obligation agreed upon in the grant agreement with the Department is satisfied.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in his grant agreement with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may cancel a scholarship grant at any time if it finds that the scholarship grant recipient has voluntarily or involuntarily terminated his schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship grant recipient does not intend to practice as required by statute, rules, and grant agreement in an underserved area in the state.

(7) Upon completion of schooling and required postgraduate training, the scholarship grant recipient is responsible for finding employment at an approved site.

(8) A scholarship grant recipient must obtain approval from the Department prior to beginning service obligation at an approved site.

(9) A scholarship grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

(10) A scholarship grant recipient must obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within three months of completion of postgraduate training.

(11) If there is no available approved site upon a scholarship grant recipient's graduation, the recipient shall repay the scholarship grant amount as negotiated in the scholarship grant agreement.

R434-40-8. Eligible Bona Fide Loans.

(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying geriatric professional or health care professional degree approved by the Department.

(2) A bona fide loan includes the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students; or

(d) a loan that the applicant conclusively demonstrates to the Department is a bona fide loan.

R434-40-9. Full-Time Equivalency Provisions for Recipients.

(1) The loan repayment grant amount is based on the level of full-time equivalency that the loan repayment grant

recipient agrees to work.

(2) A loan repayment grant recipient who provides services for at least 40 hours per week may be awarded a loan repayment grant based on the percentages as determined by the Department.

(3) A loan repayment grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower loan repayment grant based on a full-time equivalency of 40 hours per week.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in the scholarship grant with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may approve a full-time equivalency of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is equivalent to a 40 hour work week.

R434-40-10. Approved Site Determination.

(1) The Department shall approve sites based on comprehensive applications submitted by sites.

(2) The criteria the Department may use to determine an approved site for sites that are not nursing schools include:

(a) the percentage of the population with incomes under 200% of the federal poverty level;

(b) the percentage of the population 65 years of age and over;

(c) the percentage of the population under 18 years of age;

(d) the distance to the nearest geriatric professionals or health care professionals and barriers to reaching the geriatric professionals or health care professionals;

(e) ability of the site to provide support facilities and services for the requested geriatric professional or health care professional;

(f) financial stability of the site; and

(g) percent of patients served who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(h) the applicant's policy and practice to provide care regardless of a patient's ability to pay.

(3) The criteria the Department may use to determine an approved site for sites that are nursing schools include:

(a) a demonstrated shortage of nursing educator faculty;

(b) number of and degrees sought by students;

(c) number of students denied for each degree sought;

(d) residency of students;

(e) ability of the nursing school to provide support facilities and services for the requested position to be trained;

(f) faculty to student ratio, including ratios of clinical and classroom instructors;

(g) average class sizes for each of the degrees offered by the school;

(h) school plans to expand enrollment;

(i) diversity of students;

(j) current and projected staffing for the type of instructor requested;

(k) sources and stability of funding to hire and support the prospective instructor; and

(l) distance to the next closest nursing school.

(4) The Department may give preference to sites that provide letters of support from the area served by the prospective employer, such as from:

(a) a majority of practicing health care professionals;

(b) county and civic leaders;

(c) hospital administrators;

(d) business leaders, local chamber of commerce, citizens; and

(e) local health departments.

(5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a shortage of health care professional(s) and that are requesting one of the following medical specialties:

(a) family practice;

(b) internal medicine;

(c) obstetrics/gynecology; and

(d) pediatrics.

(6) To become approved, a site must offer a salary and benefit package competitive with salaries and benefits of other geriatric professionals and health care professionals in the service area.

(7) Other criteria that the site applicant can demonstrate as furthering the purposes of the act.

R434-40-11. Loan Repayment Grant Eligibility and Selection.

(1) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a health care specialty is needed at an approved site;

(b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, worked with geriatric populations, or other service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, has worked with geriatric populations, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of health care services to the medically underserved;

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to serve in an underserved area;

(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(c) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving in an underserved area;

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the Department that establishes his professional competence or conduct;

(d) the applicant's financial need;

(e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(f) the applicant's willingness to provide care regardless of a patient's ability to pay;

(g) the applicant's ability and willingness to provide care; and

(h) the applicant's achieving an early match with an approved site.

(2) To be eligible for a loan repayment grant, an applicant must be a United States citizen or permanent

resident.

(3) The Department may consider only grant applicants who apply within 18 months of the applicant's beginning employment at an approved eligible site.

R434-40-12. Scholarship Grant Eligibility and Selection.

(1) In selecting a recipient for a nurse scholarship grant, the Department may evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in an underserved area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve in an underserved area or service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for services in an underserved area; and

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to the medically underserved.

(b) evidence that the applicant has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends an accredited school;

(e) the applicant's projected educational expenses;

(f) the applicant's educational, personal, and professional references that demonstrate the applicant's good character and potential to successfully complete school; and

(g) the applicant's essay which is required as part of the scholarship application;

(2) In selecting a scholarship grant recipient, the Department may give preference to applicants who agree to serve for a greater length of time in return for scholarship assistance.

(3) To be eligible to receive a scholarship grant, an applicant must be a United States citizen or permanent resident.

R434-40-13. Loan Repayment and Scholarship Grant Service Obligation.

(1) Before receiving an award under the act, the recipient shall enter into a grant agreement with the state agreeing to the conditions upon which the award is to be made.

(2) The grant agreement shall include necessary conditions to carry out the purposes of the act.

(3) In exchange for financial assistance under the act, the recipient shall serve for a period established at the time of the award, but which may not be for less than 24 months, in an underserved area at a site approved by the Department.

(4) The recipient's service in an underserved area at a site approved by the Department retires the amount owed for the award according to the schedule established by the Department at the time of the award.

(5) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under the act.

(6) A scholarship grant recipient must:

(a) be a full-time matriculated student and meet the school's requirements to continue in the program and receive an advanced degree within the time specified in the scholarship grant agreement, unless extended pursuant to R434-40-16;

(b) within three months before and not exceeding one month following graduation or completion of postgraduate training, a scholarship grant recipient shall provide to the Department documented evidence of an approved site's intent to hire him.

(c) upon completion of schooling or postgraduate training, the scholarship grant recipient must find employment at an approved site.

(d) obtain an unrestricted license to practice in Utah prior to beginning to fulfill the service obligation at the approved site.

(e) obtain approval from the Department prior to beginning to fulfill his service obligation at an approved site.

(f) begin employment at the approved site within three months of graduation or completion of postgraduate training.

(g) obtain Department approval prior to changing the approved site where he fulfills his service obligation.

R434-40-14. Loan Repayment Grant Breach, Repayment, and Penalties.

(1) A loan repayment grant recipient under the act who fails to complete the service obligation shall:

(a) pay as a penalty twice the total amount of the loan repayment grant on a prorated basis according to a schedule established by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and

(b) costs and expenses incurred in collection, including attorney fees.

(2) A loan repayment grant recipient who breaches his grant agreement with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching loan repayment grant recipient who does not begin to repay within 30 days.

(3) The breaching loan repayment grant recipient shall pay the total amount due within one year of breaching the grant agreement. The scheduled payback may not be less than four equal quarterly payments.

(4) The amount to be paid back shall be determined from the end of the month in which the loan repayment grant recipient breached the grant as if the recipient had breached at the end of the month.

(5) The breaching loan repayment grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the grant agreement.

(6) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.

R434-40-15. Scholarship Grant Breach, Repayment, and Penalties.

(1) A scholarship grant recipient who :

(a) fails to finish his professional schooling within the period of time agreed upon with the Department shall within 90 days after the deadline for completing his schooling or within 90 days of his failure to continue his schooling, whichever occurs earlier, shall repay:

(i) all scholarship money received according to a schedule established at the time of the award with the Department;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant agreement; and

(iii) costs and expenses incurred in collection, including attorney fees;

(b) finishes his schooling and fails to pass the necessary professional certifications or examinations within the time period agreed upon with the Department shall repay:

(i) all scholarship money received according to a schedule established by grant agreement with the Department;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant; and

(iii) costs and expenses incurred in collection, including attorney fees;

(c) finishes his schooling and fails to take the necessary professional certifications or examinations within the time period agreed upon with the Department shall:

(i) pay as a penalty twice the total amount of the scholarship money on a prorated basis according to a schedule established by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and

(ii) costs and expenses incurred in collection, including attorney fees;

(d) finishes his schooling and becomes a health care professional but who fails to fulfill his service obligation shall repay:

(i) twice the total scholarship grant amount received that is not yet retired by his service on a prorated basis according to a schedule established by grant agreement with the Department;

(ii) 12% per annum interest on the unretired scholarship money calculated from the date each installment was received under the scholarship grant agreement; and

(iii) costs and expenses incurred in collection, including attorney fees.

(2) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.

(3) The amount to be paid back shall be determined from the end of the month in which the scholarship grant recipient breached the scholarship grant as if the scholarship grant recipient had breached at the end of the month

(4) The breaching scholarship grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the scholarship grant agreement.

R434-40-16. Extension of Loan Repayment and Scholarship Grants.

(1) The Department may extend the period within which the loan repayment grant recipient must complete the service obligation:

(a) if the loan repayment grant recipient has signed a grant agreement for two years the loan repayment grant recipient may apply on or after his first day of service under a loan repayment grant to extend his grant agreement by one year;

(b) a loan repayment grant may be extended only at an approved site;

(c) a loan repayment grant recipient who desires to extend his loan repayment grant must inform the Department in writing of his interest in extending his grant agreement at least six months prior to the end of the current service obligation.

(2) The Department may extend the period within which the scholarship grant recipient must complete his education:

(a) if the scholarship grant recipient has a serious illness;

(b) if the scholarship grant recipient is activated by the military;

(c) for other good cause shown, as determined by the Department.

(3) The service obligation may be extended only at an approved site.

R434-40-17. Release of Recipient from Service Obligation.

(1) The Department may cancel or release, in full or in part, a recipient from his service obligation under the grant agreement without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the loan repayment or scholarship grant conditions;

(c) if the recipient is unable to fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(d) if the recipient dies; or

(e) for other good cause shown, as determined by the Department.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete the required schooling or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit;

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

(3) The Department may develop alternative service obligation criteria that a loan repayment or scholarship grant recipient may use to fulfill his service obligation if the loan repayment or scholarship grant recipient is unable to fulfill his service obligation at an approved site due to reasons beyond his control.

R434-40-18. Reporting Requirements of Award Recipients.

The Department may require an award recipient to provide information regarding the academic performance, commitment to underserved areas, continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in school; postgraduate training; and during the period the award recipient is completing the service obligation.

R434-40-19. Reporting Requirements of Approved Sites.

The Department may require the approved site to provide information regarding the award recipients' performance, commitment to underserved areas, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the award recipient is completing the service obligation.

KEY: medically underserved, grants, scholarships
June 1, 2016 26-46-102
Notice of Continuation May 8, 2019

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-19. Abortion Reporting.
R436-19-1. Abortion Reporting.

To ensure compliance with Subsections 76-7-313(1) and (2), each physician who performs an abortion shall submit a completed "Report of Induced Termination of Pregnancy" form to the department within 30 days after the day on which the abortion is performed.

KEY: abortions, vital records
May 8, 2019 **76-7-313(1)**

R455. Heritage and Arts, History.
R455-11. Historic Preservation Tax Credit.
R455-11-1. Authority.

(1) Sections 59-7-609 and 59-10-1006 allow for an historic preservation tax credit by the Utah State Tax Commission and provide for certain duties of the Division of State History and the State Historic Preservation Office.

(2) Section 9-8-205 provides that the Board of State History and the Division shall make policies and rules to direct the division director in the carrying out of his duties.

R455-11-2. Purpose.

The purposes of this rule are: (1) to ensure an orderly process by the Division of State History and the State Historic Preservation Office, (2) to allow for appeal and judicial review of decisions, and (3) to ensure that all rehabilitation work on historic preservation tax credit projects meets the Secretary of the Interior's "Standards for Rehabilitation".

R455-11-3. Applicability.

This rule applies to all applications and proceedings under Sections 59-7-609 and 59-10-1006.

R455-11-4. Definitions.

As used in this rule:

(1) "State Historic Preservation Office" means the Office of Preservation within the Division of State History known hereafter as Office.

(2) "Director" means the Director of the Division of State History.

(3) "Office" means the Office of Historic Preservation within the Division of State History.

(4) "Division" means the Division of State History.

(5) "Historic Preservation Tax Credit" means any tax credit allowed by the Utah State Tax Commission pursuant to Sections 59-7-609 or 59-10-1006.

(6) "Project" means the entire scope and course of work on any building and accompanying site for which an applicant is seeking the historic preservation tax credit.

(7) "Applicant" means any person or entity that is seeking an historic preservation tax credit.

(8) "Standards" means the Secretary of Interior's "Standards for Rehabilitation" as promulgated under the authority of the National Historic Preservation Act, 54 U.S.C. 300101 et seq.

(9) "National Register" means the National Register of Historic Places maintained pursuant to the National Historic Preservation Act, 54 U.S.C. 300101 et seq.

(10) "Anticipatory construction, demolition, or alteration" means any rehabilitation-related action that does not meet the "Standards" taken with prior knowledge and in intentional disregard of the "Standards" or after having received Division comments.

R455-11-5. Application for Historic Preservation Tax Credit.

(1) Any person or entity seeking the historic preservation tax credit shall, prior to completion of the rehabilitation project, apply to the Office for certification of historic significance and approval of the proposed or on-going rehabilitation work. The applications shall be on forms approved by the Office. The applicant shall complete the applications in whole and shall provide all other information requested relative to the project including adequate pre-rehabilitation photographs and other required documentation.

(2) The Office shall consult with the applicant and provide historic and technical advice and assistance subject to budgetary and management constraints, as necessary to assist the applicant in applying for the historic preservation tax credit. The Office shall review the application within thirty days of receipt to determine if the proposed or on-going rehabilitation work meets the "Standards".

(3) If the Office determines the project meets the "Standards" and that no anticipatory construction, demolition, or alteration has occurred, the Office shall provide the applicant with written approval of the proposed or on-going work along with any further comments or conditions deemed necessary.

(4) If after full consultation the Office determines the project does not meet the "Standards", that anticipatory construction, demolition, or alteration has occurred, or the building is not a certifiable historic building, the Office shall notify the applicant in writing of the decision, set forth the basis of the decision, and detail the process to appeal the decision. The applicant or other interested party may request a review of the decision as set forth in R455-11-9.

R455-11-6. Execution of Project.

(1) During the course of the project, the Office shall be available for continuing consultation subject to budgetary and management constraints. If the applicant desires to modify the approved work plan, the applicant shall make such request for a change on a form approved by the Office and shall be governed by the provisions of R455-11-5.

(2) The applicant shall allow access and observation of the project building at any reasonable time upon request of the Office.

R455-11-7. Certification of Completed Work.

(1) Upon completion of the project, the applicant shall request certification of completed work in writing on a form approved by the Office and shall provide all other information requested by the Office relative to the project. The applicant shall allow access to the project for final observation by the Office if necessary in determining if the work conforms with the approved plan.

(2) At this time the applicant shall also submit a complete National Register nomination if the building is not already listed in the National Register as set forth in R455-11-10.

(3) The final Office review shall be in writing and shall be forwarded to the applicant within thirty days of receipt of a complete application.

R455-11-8. Issuance of Authorization Form and Certification Number.

If the Office determines the work was completed in accordance with the approved plan and meets the "Standards", the Office shall issue an authorization form provided by the Utah State Tax Commission, including the unique certification number. If any request for review is sought, the Office shall not issue the authorization form or unique certification number unless and until the review results in approval of the project.

R455-11-9. Request for Review and Appeal Proceedings.

(1) All proceedings under R455-11 with regard to the historic preservation tax credit are informal.

(2) The applicant or any interested person may seek review of the decision of the Office by filing a request for review with the Director. The request for review shall set forth in detail that portion of the decision of the Office for which review is sought, and on what basis the decision was inconsistent with the facts or "Standards". Copies of the request for review shall be sent to the applicant and to any other party who has expressed interest in the proceeding as appropriate. Any such request for review must be filed with the Director within 30 days of the decision of the Office.

(3) The applicant or any interested person may file with the Director a response to the request for review within fifteen days of notification.

(4) Review of the Office decision shall be made by the Director and shall be based on review of the project file, the request for review, and responses, if any. The Director may conduct an independent investigation and request further information from the Office staff, applicant, or any other party to the project. In addition, the Director may, at his/her sole discretion, conduct an informal hearing on the review.

(5) Within thirty days of receipt of the request for review, the Director shall issue his/her decision based on review of the project file and the information received at a hearing or from other sources, if any. The Director shall set forth in writing his/her decision concerning the request for review and forward it to the applicant and other interested parties.

(6) Judicial review of the decision of the Director may be obtained by filing a complaint in the Third Judicial District Court in Salt Lake County seeking review by a trial de novo. The issue in the district court is whether the decision of the Director constituted an abuse of his/her discretion. The person or entity seeking judicial review shall have the burden of proof that the decision of the Director constituted an abuse of his/her discretion.

R455-11-10. Noncertified Historic Buildings.

(1) If the project building is not listed in the National Register at the time of the application for certification of completed work, the applicant shall submit a complete National Register nomination form to the Office. The Office shall review the nomination for completeness and forward it to the Board of State History according to requirements of 36 CFR 60 and applicable policies for evaluation and action.

(2) If the project building is located in a National Register Historic District and the building has not been designated by the Division as being of significance to the district at the time of application for certification of completed work, the applicant shall submit a request for designation to the Office. The request shall be on a form approved by the Office. The Office shall review the request for completeness and determine if the project building is of significance to the district.

KEY: preservation, tax credits, rehabilitation, housing
January 2, 1996 59-7-609
Notice of Continuation May 14, 2019 59-10-1006
9-8-205

R455. Heritage and Arts, History.
R455-14. Procedures for Electronic Meetings.
R455-14-1. Purpose.

The Board of State History recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, members of the Board may need to appear telephonically or electronically pursuant to Utah Code 52-4-207.

R455-14-2. Authority.

This rule is enacted under the authority of Section 52-4-207.

R455-14-3. Procedure.

The following procedure shall govern any electronic meeting:

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

B. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided in accordance with Section 52-4-202(3). These notices shall be provided at least 24 hours before the meetings.

C. Notice of the possibility of an electronic meeting shall be given to the members of the Board of State History that may be allowed to appear electronically at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board of State History authorized to participate electronically may participate in the meeting electronically or telephonically.

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

E. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: administrative procedures
July 21, 2014 **52-4-207**
Notice of Continuation May 14, 2019

R455. Heritage and Arts, History.
R455-15. Procedures for Emergency Meetings.
R455-15-1. Purpose.

The Board of State History recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-202 cannot be met. Pursuant to Utah Code Section 52-4-202(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

R455-15-2. Authority.

This rule is enacted under the authority of Utah Code 52-4-202(5).

R455-15-3. Procedure.

The following procedure shall govern any emergency meeting:

A. No emergency meeting shall be held unless an attempt has been made to notify all of the members of the Board of State History of the proposed meeting and a majority of the convened Board of State History votes in the affirmative to hold such an emergency meeting.

B. Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the auditor;

(ii) If members of the Board of State History may appear electronically or telephonically:

C. All such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

D. Notice to the members of the Board of State History shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

E. Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

F. If one or more members of the Board of State History appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

G. In convening the meeting and voting in the affirmative to hold such an emergency meeting, the Board of State History shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the Board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-202.

KEY: administrative procedures
July 21, 2014 52-4-202
Notice of Continuation May 14, 2019

R527. Human Services, Recovery Services.
R527-10. Disclosure of Information to the Office of Recovery Services.
R527-10-1. 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 meet the rulemaking requirement in Section 62A-11-104.1(2) that the office specify the type of health insurance and financial record information required to be disclosed under that section.

R527-10-2. Disclosure of Health Insurance Information.

Upon written request by the office, the following health insurance information shall be provided:

1. the availability of health and dental insurance to the employee;
2. the health insurance company name, address, and telephone number;
3. the policy number;
4. the names of those covered and their relationship to the employee;
5. the effective dates of coverage;
6. premium and co-payment amounts, deductibles, and exclusions; and
7. claims history for 24 months prior to the date of request by the office.

R527-10-3. Disclosure of Financial Information to the Office of Recovery Services.

Upon written request by the office, the following documents and financial record information regarding the individual named in the request shall be provided:

1. savings account and checking account numbers and balances;
2. type of loan, loan amount and balance owing;
3. current or last known address;
4. social security number;
5. employer and salary, if known;
6. loan application;
7. all names listed on the account and the signature card;
8. terms of accessibility to the account;
9. former names and aliases;
10. all accounts for that person with the bank, including certificates of deposit, money market accounts, treasury bonds, etc., numbers, names, and amounts;
11. security on loans;
12. account statements;
13. transaction slips;
14. checks deposited or cashed;
15. checks written on account;
16. trusts; and
17. applications to open an account.

KEY: child support, financial information, health insurance

July 13, 2009	**62A-1-111**
Notice of Continuation May 3, 2019	**62A-11-104.1(2)**
	62A-11-107

R527. Human Services, Recovery Services.
R527-332. Unreimbursed Assistance Calculation.
R527-332-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to create rules necessary to fulfill its duties by Section 62A-11-107.

2. The purpose of this rule is to meet the requirements of 45 CFR 302.32 and 45 CFR 302.51, which require the office to refund collections in excess of the unreimbursed assistance amount (URA) to the family within two calendar days of the end of each month that assistance was received.

R527-332-2. Definitions.

1. IV-A Assistance means cash assistance which was issued based upon Title IV-A funding of AFDC or FEP programs.

2. Unreimbursed Assistance means the total lifetime amount of IV-A assistance that the State has expended on behalf of the IV-A household for which the State/Federal government have not been reimbursed.

R527-332-3. Unreimbursed Assistance Calculation.

The Office of Recovery Services shall calculate the amount of unreimbursed assistance. The calculation shall compare the amount of IV-A child support payments plus the amount of IV-A overpayment payments against the lifetime IV-A benefit amount.

In the event that the unreimbursed assistance amount becomes zero, or greater than zero, collection of the IV-A overpayment amount will be suspended.

KEY: assistance, overpayments, child support

February 9, 2010	**62A-1-111**
Notice of Continuation May 3, 2019	**62A-11-107**
	45 CFR 302.32
	45 CFR 302.51

R527. Human Services, Recovery Services.
R527-450. Federal Tax Refund Intercept.
R527-450-1. Certification Criteria.

The Office of Recovery Services/Child Support Services (ORS/CSS) will refer qualified support debts to the federal Office of Child Support Enforcement (OCSE) for offset by federal tax refund intercept as authorized in 45 CFR 303.72 (2003) and 42 U.S.C. Section 664.

1. Effective October 1, 2007, all IV-A and Non-IV-A child support debts will be submitted for federal tax refund offset for past-due support owed to any child, whether or not the child is a minor at the time of certification or offset.

2. IV-A and Non-IV-A debts which meet certification criteria may be certified and the federal tax refund may be intercepted, even if the obligor is paying on arrearages.

R527-450-2. Notice of Offset.

ORS/CSS will send an annual notice to all obligors certified for the federal tax refund intercept and to all unobligated spouses of these obligors, notifying the obligor of the amount of the arrearage certified, outlining the unobligated spouse's rights, and directing the obligor to contact ORS/CSS if he has questions. The notice will advise the obligor of his right to contest the amount of past-due support and of his right to an administrative review.

R527-450-3. Earned Income Credit.

ORS/CSS will refund the portion of the obligor's intercepted federal tax refund that resulted from an earned income credit, if the obligor makes a written request and includes a copy of the federal tax return. If the intercept payment has been credited to a Non-IV-A case and has disbursed to the family, the request will be denied.

R527-450-4. Distribution of Collections.

1. Any money collected through the tax refund offset process can be applied only to the arrearage certified.

2. Collections received through federal tax refund intercept will be applied to satisfy certified IV-A and foster care arrearages before Non-IV-A arrearage.

3. On Non-IV-A cases the federal tax intercept payments will be held for at least 30 days but not more than 180 days before being disbursed to the obligee.

4. In the event that the Department of the Treasury, Financial Management Service (FMS) reclaims money which has been refunded to a Non-IV-A obligee, that obligee will be required to repay to the state the amount reclaimed by FMS.

R527-450-5. Deleting or Modifying a Federal Tax Certification.

1. If the total amount certified for IV-A and Non-IV-A is reduced to zero after the certification, ORS/CSS will delete the obligor from the certification list.

2. If the obligor's arrearage increases or decreases, ORS/CSS will modify the certification amount accordingly.

KEY: alimony, child support

October 25, 2007	**62A-11-107**
Notice of Continuation May 20, 2019	**45 CFR 303.72**
	42 USC 664

R590. Insurance, Administration.
R590-171. Surplus Lines Procedures Rule.
R590-171-1. Authority.

This rule is promulgated pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111.

R590-171-2. Purpose and Scope.

A. The purpose of this rule is:

(1) to recognize The Surplus Line Association of Utah as the advisory organization of surplus lines producers;

(2) to authorize The Surplus Line Association to conduct the examination of surplus lines transactions;

(3) to authorize The Surplus Line Association to collect a stamping fee;

(4) to require that each person licensed as a surplus lines producer in Utah be a member of the advisory organization;

(5) to regulate access to the surplus lines market, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge; and

(6) to prescribe procedures for the placement of insurance with surplus lines insurers.

B. This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah.

R590-171-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:

A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.

B.(a) "Exempt Commercial Purchaser" means any person purchasing commercial insurance from the surplus lines market that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of $20,000,000 as such amount is adjusted pursuant to Subsection (b);

(B) The person generates annual revenues in excess of $50,000,000 as such amount is adjusted pursuant to Subsection (b);

(C) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000 as such amount is adjusted pursuant to Subsection (b); or

(E) The person is a municipality with a population in excess of 50,000 persons.

(b) Effective on January 1, 2015, and each fifth January occurring thereafter, the amounts in R590-171-3.B (a)(iii)(A), (B), and (D) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, 15 U.S.C. 8206(5).

C. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-91.

D. "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2)(b) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.

E. "Surplus lines insurer" means a nonadmitted insurer that may place business, pursuant to Title 31A, Chapter 15, Part 1 and this rule, with a surplus lines producer.

F. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

R590-171-4. Surplus Line Association of Utah.

A. Surplus Line Association of Utah is recognized as the advisory organization of surplus lines producers authorized by Section 31A-15-111.

B. Each person licensed as a surplus lines producer in Utah must be a member of the Surplus Line Association of Utah.

C. The Surplus Line Association of Utah is authorized:

(1) to facilitate and encourage compliance by its members with the laws of Utah and the rules of the commissioner relative to surplus lines insurance and to act in other matters as specified by Section 31A-15-111;

(2) to conduct the examination of surplus lines transactions required under Subsection 31A-15-103(11);

(3) to make a determination that a surplus lines transaction is in compliance with Subsection 31A-15-103(11) and with Sections R590-171-6 and 7 of this rule; and

(4) to collect the stamping fee prescribed by Subsection 31A-15-103(11)(d).

R590-171-5. Export List.

A. (1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with surplus lines insurers.

(2) The commissioner may consider the following in determining the insurance coverages and classes to be listed:

(a) the current marketplace;

(b) information from the Surplus Line Association Board of Directors;

(c) information from admitted and surplus lines insurers doing business in Utah;

(d) information from other sources, including producers and consumers; and

(e) any other information the commissioner deems relevant.

(3) Any person may request in writing that, at the next publication of the list, the commissioner add or remove a coverage or class of insurance from the list. The person must provide evidence of market conditions to substantiate the request.

B. The list shall be published at least annually but may be revised and republished at any time.

R590-171-6. Conditions for Placing Insurance with Surplus Lines Insurers.

Placement of insurance with surplus lines insurers pursuant to Section 31A-15-103 may only be done in accordance with either Section A, B or C below.

A. Insurance coverages and classes included on the export list may be placed with surplus lines insurers.

B. Insurance coverages and classes not included on the

export list may be placed with surplus lines insurers only under the following conditions:

(1) A good faith effort must be made to place the insurance with admitted insurers the producer has reason to believe will consider writing the type of coverage or class of insurance involved. If that effort shows that the insurance cannot be obtained because of underwriting reasons or the insured requires specific terms and conditions of coverage which are unavailable through admitted insurers, the insurance may be placed with surplus lines insurers. Placement with the surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive as defined in Subsection 31A-19a-201(2).

(2) The inability to place the insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer.

(3) The producer must document his efforts to place the insurance with admitted insurers. The documentation must include the record of the efforts to place the insurance and a written explanation confirming the effort as being in good faith. The good faith effort documentation shall be maintained in the surplus lines producer's and the originating producer's files for at least three years from the inception date of coverage or renewal.

C. An exempt commercial purchaser, that, at the time of placement, meets the requirements as defined in R590-171-3(B), may purchase commercial insurance from the surplus market.

D. All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.

R590-171-7. Conditions for Marketing Insurance with Surplus Lines Insurers.

A. Producers may not solicit business on behalf of a surplus lines insurer. However:

(1) Producers may advertise the availability of insurance products for the insurance coverages and classes included on the export list to potential insureds and other producers.

(2) Surplus lines producers may advertise their services and product lines to other producers.

(3) Such advertisements shall identify the fact that the insurance will be placed with a surplus lines insurer. The advertisements must not identify the insurer by name nor act as a solicitation on behalf of any surplus lines insurer. The advertisements shall not identify specific rates or specific policy provisions.

B. Once negotiations over the available terms and conditions for specific coverages begin, at least the following facts must be disclosed in writing to the potential insured:

(1) that the insurance will be placed through a surplus lines insurer and the name of the insurer;

(2) that the producer is not a producer of the potential insurer because surplus lines insurers are not permitted to appoint producers;

(3) that the surplus lines market is a specialty market that has limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

(4) that no protection is afforded under any Utah guaranty fund mechanism.

C. Subject to the general provisions of Section 31A-23a-501, a surplus lines producer may originate surplus lines insurance or accept applications for surplus lines insurance from any other producer duly licensed as to the kinds of insurance involved. The surplus lines producer may compensate the originating producer involved in the transaction.

D. Only that portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer. If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer. An explanation must be provided in the submission documentation outlined in R590-171-8.

R590-171-8. Reporting and Examination.

A. No later than 60 days after the effective date of a policy or a certificate of insurance that has been placed with a surplus lines insurer, the surplus lines producer must file a complete copy of the policy or certificate and justification for placement with a surplus lines insurer with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a).

B. Justification for placement with a surplus lines insurer shall:

(1) for insurance exposures placed pursuant to R590-171-6.A, consist of identification of the specific coverage or class on the export list; or

(2) for insurance exposures placed pursuant to R590-171-6.B, consist of a copy of the record of the effort to place with admitted insurers required by R590-171-6.B(3); or

(3) for insurance placed pursuant to R590-171-6.C, consist of a copy of an affidavit signed by the insured; and

(4) if applicable, consist of the explanation required by R590-171-7.D; and

(5) consist of any other information or documentation pertinent to the surplus lines placement.

C. The Surplus Line Association shall provide submission forms to be used for complying with R590-171-8.B.

D. If the contract or certificate is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by R590-171-8B must be filed with the Surplus Lines Association of Utah.

E. If the examination performed by the Surplus Line Association determines that the placement of a policy or certificate of insurance with a surplus lines insurer is not in compliance with Section 31A-15-103(11)(a) or this rule, the Surplus Line Association shall take such corrective action as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.

R590-171-9. Rule Distribution.

The Surplus Line Association of Utah shall distribute a copy of this rule to every surplus lines producer and instruct all surplus lines producers as to its scope and operation.

R590-171-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-171-11. Severability.

If a provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
January 22, 2013 31A-2-201

Notice of Continuation May 23, 2019 **31A-15-103**
31A-15-111

R590. Insurance, Administration.
R590-225. Submission of Property and Casualty Rate and Form Filings.
R590-225-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Sections 31A-2-201.1 and 31A-19a-203, and Subsections 31A-2-201(3) and 31A-2-202(2).

R590-225-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) property and casualty and title form filings required by Section 31A-21-201;

(b) property and casualty and title rates, and supplementary information under Section 31A-19a-203;

(c) service contract form filings required by Subsection 31A-6a-103(2); and

(d) bail bond form filings required by Section 31A-35-607 and Rule R590-196.

(e) guaranteed asset protection waiver filings required by Sections 31A-6b-202 and 31A-6b-203.

(2) This rule applies to all lines of property and casualty insurance, including title insurance, bail bond, service contracts, and guaranteed asset protection waivers.

R590-225-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following filing forms are hereby incorporated by reference and are available on the department's web site, http://www.insurance.utah.gov.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, 2019;

(b) "NAIC Uniform Property and Casualty Coding Matrix", dated January 1, 2019;

(c) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated April 2017; and

(d) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated April 2017.

R590-225-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, or

(b) filing submitted via an email system.

(3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(4) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(5) "Filer" means a person who submits a filing.

(6) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(7) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(8) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(9) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(10) "Type of Insurance" means a specific line of property and casualty insurance including general liability, commercial property, workers compensation, automobile, homeowners, title, bail bond, service contracts, and guaranteed asset protection waivers.

(11) "Use And File" means a filing can be used, sold, or offered for sale if it is filed within a stated period of time after its initial use.

(12) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-225-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing;

(c) will not be reopened for purposes of resubmission.

(5) A prior filing will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

(a) If the filing is in an open status, corrections can be made at any time.

(b) If the filing is in a closed status, a new filing is required. The filer must reference the original filing in the filing description.

(8) If responding to a Response to Filing Objection Letter or an Order to Prohibit Use, refer to R590-225-13 for instructions.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information. A filing that is withdrawn may no longer be used.

R590-225-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) EXCEPTION: bail bond agencies, service contract providers, and guaranteed asset protection providers may choose to use email instead of SERFF to submit a filing.

(2) All rate filings for private passenger auto, homeowners, or workers compensation type of insurance must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(3) A filing must be submitted by market type and type of insurance, not by annual statement line number.

(4) A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description.

(5) A filer may submit a filing for more than one insurer if all applicable companies are listed.

(6) SERFF Filing.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description Section with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(b) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(c) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rates and supplementary rating information must be attached to the Rate/Rule Schedule tab.

(iii) The actuarial certification required by R590-225-6(2) must be attached to the supporting documentation tab.

(d) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(7) A complete EMAIL filing consists of the following when submitted by a bail bond agent, a service contract provider, or a guaranteed asset protection provider:

(a) The title of the EMAIL must display the company name only.

(b) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in R590-225-3(2), must be properly completed.

(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

(A) "NAIC Coding Matrix;"

(B) "NAIC Instruction Sheet;" and

(C) "Utah Property and Casualty Content Standards."

(ii) Do not submit the documents described in (A), (B), and (C) with the filing.

(c) Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the Filing Description with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(f) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.

R590-225-7. Procedures for Form Filings.

(1) Forms in general:

(a) Forms are "File And Use" filings. EXCEPTION: service contracts, bail bonds, and guaranteed asset protection waivers are "File Before Use".

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form. A draft may not be submitted.

(2) If you have authorized a Rate Service Organization (RSO) to make form filings on your behalf, no filing by you is required if you implement the filings as submitted by the

RSO.

(a) A filing is required if you delay the effective date, non-adopt or alter the filing in any way.

(b) Your filing must be received by the department before the RSO effective date.

(c) We do not require that you attach copies of the RSO's forms when you reference a filing.

(3) If you have NOT authorized an RSO to file forms on your behalf, you must include, in your filing a letter stating your intent to adopt any RSO forms for your use.

(a) Copies of the RSO forms are not required.

(b) Your filing must include a complete list of the RSO forms you intend to adopt by form number, title/name and filing identification number of the RSO.

(4) A "Me Too" filing, referencing a filing submitted by another insurer, bail bond agency, or service contract provider is not permitted.

(5) If a previously filed Utah amendatory endorsement will be used in connection with the form being filed, explain this in the Filing Description section of the transmittal form and include a copy with the filing.

(6) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal:

(a) only one copy of each form is required;

(b) If the name of each respective company or unique insurer logo is printed on each separate set of the form, then a separate form must be filed for each insurer.

(7) Since a form may be used once it is "Filed" and must be "Filed" before it can be used, sold or offered for sale, you do not need to re-file or notify the department if the implementation date of the original filing changes.

R590-225-8. Procedures for Rate and Supplementary Information Filings.

(1) Rates and supplementary information in general.

(a) Rates and supplementary information are "Use And File" filings. EXCEPTION: title and workers compensation rates and supplementary information are "File Before Use" filings.

(b) Service contract providers, bail bond agencies, and guaranteed asset protection providers are exempt from this section.

(c) All rate filings for private passenger auto, homeowners, or workers compensation type of insurance must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(2) If you have authorized a Rate Service Organization (RSO) to make a prospective loss cost, supplementary information filing, or both, on your behalf, no filing by you is required if you implement the filing as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt, or alter the filing in any way.

(b) Any such filing must be received by the department within 30 days of the effective date established by the RSO.

(c) We do not require that you attach copies of the RSO's manual pages when you reference an RSO filing.

(3) If you have NOT authorized an RSO to file the prospective loss cost, supplementary rating information, or both, on your behalf

(a) you must include in your filing a letter stating your intent to adopt the RSO prospective loss cost, supplementary rating information filing, or both.

(b) You must file copies of any manual pages as if they were your own and provide your actuarial justification.

(4) A "Me Too" filing, referencing a filing submitted by another licensee, is not permitted.

(5) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal and the supporting data and manual pages are identical for each insurer included in the filing, only one copy of the supporting data and manual pages are required to be submitted.

(6) Rate and supplementary information filings must be supported and justified by each insurer.

(a) Justification must include:

(i) submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates; and

(ii) a complete explanation as to the extent to which each factor has been used.

(b) Underwriting criteria are not required unless they directly affect the rating of the policy.

(c) Underwriting criteria used to differentiate between rating tiers is required.

(7) When submitting a filing for any kind of rating plan, rating modification plan, or credit and debit plan, an insurer must include in the filing:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(c) A filing will be rejected as incomplete if it fails to specifically provide this information.

(8) Utah and countrywide statistical data for the latest three years available must be submitted with each filing.

(a) This data should include earned premiums, incurred losses, loss ratios, establishment of expense factors, and expected loss ratios.

(b) Calculations involved in establishing rates from loss experience are to be exhibited including the establishment of trend factors, loss development factors, etc.

(c) If any of the above information is not available, a detailed explanation of why must be provided with the filing.

(9) Prospective loss cost and loss cost multiplier.

(a) Loss cost multiplier.

(i) An individual insurer adjustment to the RSO prospective loss cost must be made as part of the calculation of the loss cost multiplier and must be included in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(ii) This form allows for the inclusion of an individual insurer modification of the RSO prospective loss cost.

(10) Procedures for Reference Filings to Advisory Prospective Loss Cost.

(a) An RSO does not usually file an advisory rate that contains provisions for expenses, other than loss adjustment expenses.

(i) An RSO develops and files with the commissioner a "Reference Filing" containing advisory prospective loss cost and supporting actuarial and statistical data.

(ii) Each insurer must individually determine the rates it will file and the effective date of any rate changes.

(b) If an insurer that is a member, subscriber or service purchaser of any RSO determines to use the prospective loss cost in an RSO Reference Filing in support of its own filing, the insurer must make a filing using the "Utah Insurer Loss Cost Multiplier Filing Forms."

(c) The insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost multiplier contained in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(d) An insurer may file a modification of the prospective loss cost in the RSO Reference Filing based on its own anticipated experience.

(e) Actuarial justification is required for a modification, upwards or downwards, of the prospective loss cost in the Reference Filing.

(f) An insurer may request to have its loss cost

adjustments remain on file and reference all subsequent RSO prospective loss cost Reference Filings.

(i) Upon receipt of subsequent RSO Reference Filings, the insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost adjustments contained in the "Utah Insurer Loss Cost Multiplier Filing Forms" on file with the commissioner, and will be effective on the effective date of the prospective loss cost.

(ii) The insurer need not file anything further with the commissioner.

(g) If the filer wants to have its filed loss cost adjustments remain on file with the commissioner, but intends to delay, modify, or not adopt a particular RSO's Reference Filing, the filer must make an appropriate filing with the commissioner.

(h) An insurer's filed loss cost adjustments will remain in effect until the filer withdraws them or files a revised "Utah Insurer Loss Cost Multiplier Filing Form."

(i) A filer may file such other information the filer deems relevant.

(j) If an insurer wishes to use minimum premiums, it must file the minimum premiums it proposes to use.

(11) Supplementary Rate Information.

(a) The RSO files with the commissioner RSO filings containing a revision of rules, relativities and supplementary rate information. These RSO filings include:

(i) policy-writing rules;

(ii) rating plans;

(iii) classification codes and descriptions; and

(iv) territory codes, descriptions, and rules, which include factors or relativities such as, increased limits factors, classification relativities or similar factors.

(b) These filings are made by the RSO on behalf of those insurers that have authorized the RSO to file rules, relativities and supplementary rating information on their behalf.

(c) An RSO may print and distribute a manual of rules, relativities and supplementary rating information.

(d) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions and effective date then the insurer does NOT file anything with the commissioner.

(e) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions as filed, BUT with a different effective date, then the insurer must notify the commissioner of the insurer's effective date within 30 days after the RSO's effective date.

(f) If an insurer has authorized an RSO to file on its behalf, but the insurer decides not to use the revision, then the insurer must notify the commissioner within 30-days after the RSO's effective date.

(g) If an insurer has authorized an RSO to file on its behalf, but the insurer decides to use the revision with modification, then within 30-days of the RSO's effective date the insurer must file the modification specifying the basis for the modification and the insurer's effective date.

(12) Consent-to-rate Filing.

(a) Subsection 31A-19a-203(6) allows an insurer to file a written application for a particular risk stating the insurer's reasons for using a higher rate than that otherwise applicable to a risk.

(b) The Filing Description must indicate that it is a consent-to-rate filing, show the filed rate, the proposed rate, and the reasons for the difference.

(13) Individual Risk Filing.

(a) R590-127, "Rate Filing Exemptions", provides for those circumstances when an Individual Risk filing is permitted.

(b) An individual risk filing must be filed with the commissioner.

(i) The filing shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, and premium development.

(ii) The Filing Description must indicate that it is an individual risk filing, and contain the underwriter's explanation for the filing.

(14) Information Regarding Dividend Plan.

(a) Sections 31A-19a-210 and 31A-21-310 allow for dividend distributions.

(b) A plan or schedule for the distribution of a dividend developed AFTER THE INCEPTION of a policy is NOT considered a rating plan and does not have to be filed according to the provisions of this rule.

(c) A plan or schedule for the distribution of a dividend applicable to an insurance policy FROM ITS INCEPTION are required to be filed pursuant to Section 31A-21-310.

(15) The Utah Insurance Code allows tiered rating plans within one insurer or insurer group with common ownership.

(a) A filing must show that the tiers are based on mutually exclusive underwriting rules, which are based on clear, objective criteria that would lead to a logical distinguishing of potential risk.

(b) A filing must provide supporting information that shows a clear distinction between the expected losses and expenses for each tier.

(c) If an insurer group is using a tiered rating structure, the group of insurers cannot all file the same loss cost multiplier and then file standard percentage deviations.

(i) A difference must be demonstrated in the loss cost multiplier formula, either as a modification of the RSO prospective loss cost or in the insurer expense factor.

(ii) An individual insurer adjustment or modification must be supported by actuarial data which establishes a reasonable standard for measuring probable insurer variations in historical or prospective experience, underwriting standards, expense and profit factors.

R590-225-9. Additional Procedures for Workers Compensation Rate Filings.

The following are additional procedures for workers' compensation rate filings:

(1) All rate filings for workers compensation must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(2) Rates and supplementary information must be filed 30 days before they can be used.

(3)(a) Each insurer must individually determine the rates it will file.

(b) Filed rates.

(i) An insurer's workers' compensation filed rates are the combination of the most current prospective loss cost filed by the designated rate service organization and the insurers loss cost adjustment, known as the loss cost multiplier (LCM), as calculated and filed using the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Form."

(ii) Each insurer must implement the designated rate service organization's current prospective loss cost on the effective date assigned by the designated rate service organization. INSURERS MAY NOT DEFER NOR DELAY ADOPTION.

(iii) An insurer's filed loss cost multiplier will remain in effect until the insurer withdraws it or files a new loss cost multiplier.

(iv) Upon receipt of subsequent designated rate service organization reference filings, the insurer's filed rates are the combination of the designated RSO's prospective loss cost and the loss cost multiplier contained in the insurer's most

current "Utah Loss Cost Multiplier Filing Form" on file with the department.

(4) An insurer may file a modification to the designated rate service organization prospective loss cost in the subject reference filing based on its own anticipated experience. Supporting documentation will be required for any modifications, upwards or downwards, of the designated rate service organization prospective loss cost.

(5) An insurer may vary expense loads by individual classification or grouping. An insurer may use variable or fixed expense loads or a combination of these to establish its expense loadings. However, an insurer is required to file data in accordance with the uniform statistical plan filed by the designated rate service organization.

(6) When submitting a filing for a workers compensation rating plan, a rating modification plan, or a credit and debit plan, an insurer must include in the filing the following or it will be rejected as incomplete:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(7) To the extent that an insurer's rates are determined solely by applying its loss cost multiplier, as presented in the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Forms" to the prospective loss cost contained in a designated rate service organization reference filing and printed in the designated rate service organization's rating manual, the insurer need not develop or file its rate pages with the commissioner. If an insurer chooses to print and distribute rate pages for its own use, based solely upon the application of its filed loss cost multiplier, the insurer need not file those pages with the insurance commissioner.

R590-225-10. Additional Procedures for Title Rate Filings.

(1) Title rate and a supplementary information filing are "File Before Use" filings. Rates and supplementary information shall be filed with the commissioner 30 days prior to use.

(2) Each change or amendment to any schedule of rates shall state the effective date of the change or amendment, which may not be less than 30 days after the date of filing. Any change or amendment remains in force for a period of at least 90 days from its effective date.

(3) Supplementary information and rate filings must be supported and justified by each insurer. Justification must include submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates along with a complete explanation as to the extent to which each factor has been used.

(4) Rates that vary by risk classification such as extended coverage or standard coverage, and all discount factors, such as refinance, subdivision, or construction for purpose of resale discounts, must be supported by differences in expected losses or expenses.

(5) No rate may be filed or used which would require the title insurer or any title agency or producer to operate at less than the cost of doing business or adequately underwriting the title insurance policies.

R590-225-11. Classification of Documents.

(1) The Department will not classify as protected, certain information in property and casualty rate filings unless these procedures are complied with.

(2) Section 31A-19a-204 requires rates, and supplementary rate information to be open for public inspection. Supporting information in a rate filing is not designated under Section 31A-19a-204 as public information, however, under the Government Records Access and Management Act (GRAMA) supporting information in a rate filing would be considered open for public inspection unless it is classified as private, controlled, or protected. Under GRAMA the Department may classify certain information in a record as private, controlled, or protected. It is clear that the only category applicable to rate, rule and form filings other than as a public record is as a protected record. If a record is classified as protected, the Department may not disclose the information in the record to third persons specifically and to the public generally.

(3) The only information the Department may classify as protected, absent clear documentation otherwise, in accordance with Section 63G-2-305 are the following items:

(a) Information deemed to be trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) "Commercial Information and non-individual financial information obtained from a person which:"

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(4) The person submitting the information under R590-225-11(3)(a) or (b) above and claiming that such is or should be protected has provided the governmental entity with the information in Subsection 63G-2-309(1)(a)(i).

(5) The department will handle supporting information a filer submits as part of a rate filing in the following manner:

(a) The filer will need to request which specific document the filer believes qualifies under GRAMA Subsection 63G-2-305(1) or (2) or both when the filing is submitted; and

(b) the document must include a written statement of reasons supporting the request that the information should be classified as protected.

(c) If the filer does not request the information in the document to be classified as protected, the document will be classified as public.

(d) The Department will not automatically classify any document in a filing as protected.

(e) The Department will not re-open a filing to permit a company to request protected classification of previously filed documents.

(6) Once the filing has been received, the Department will review the documents the filer has requested to be classified as protected to see if it meets the requirements of Subsection 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected, and the information will not be available to the public or third parties.

(b) If all the information in the document does not meet the requirements for being classified as protected, the Department will notify the filer of the denial, the reasons therefore, and of the filer's right under GRAMA to appeal the denial. The filer will have 30 days to appeal the denial as

allowed by Section 63G-2-401. Despite the denial of classifying the information as protected, the Department, pursuant to GRAMA, will nonetheless treat the information as if it had been classified as protected until:

(i) the filer has notified the Department that the filer withdraws the request for designation as protected; or

(ii) the 30 day time limit for an appeal to the Commissioner has expired; or

(iii) the filer has exhausted all appeals under GRAMA and the documentation has been found to be a public document.

(c) If the filer combines in the same document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

(7) Filings submitted that show a pattern of requesting non-qualifying items as a protected document may be considered a violation of this rule. This would include putting both protected and public information in one document.

R590-225-12. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing; and

(c) Submission method, SERFF, or email; and

(d) tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-225-13. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) for filings submitted in SERFF, attach the documents described in R590-225-12(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-225-16. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: property casualty insurance filing

May 22, 2019	**31A-2-201**
Notice of Continuation February 13, 2019	**31A-2-201.1**
	31A-2-202
	31A-19a-203

R590. Insurance, Administration.
R590-230. Suitability in Annuity Transactions.
R590-230-1. Authority.

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-230-2. Purpose.

(1) The purpose of this rule is to:

(a) set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed; and

(b) require insurers to establish a system to supervise recommendations.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

R590-230-3. Scope.

(1) This rule shall apply to any recommendation to purchase, replace, or exchange an annuity made to a consumer by a producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

(a) direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule; and

(b) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC Section 457;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

R590-230-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Annuity" means:

(a) an annuity as defined in Section 31A-1-301; and

(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "FINRA" means the Financial Industry Regulatory Authority or its successor.

(3) "Producer" includes an individual producer or agency producer.

(4) "Recommendation" means advice provided by a producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, replacement or exchange of an annuity in accordance with that advice.

(5) "Replacement" is as defined in R590-93-3.

(6) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) age;

(b) annual income;

(c) financial situation and needs, including the financial resources used for the funding of the annuity;

(d) financial experience;

(e) financial objectives;

(f) intended use of the annuity;

(g) financial time horizon;

(h) existing assets, including investment and life insurance holdings;

(i) liquidity needs;

(j) liquid net worth;

(k) risk tolerance; and

(l) tax status.

R590-230-5. Duties of Insurers and of Producers.

(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(a) the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. These requirements are intended to supplement and not replace the disclosure requirements of R590-229;

(b) the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;

(c) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase, or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement that the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and

(d) in the case of an exchange or replacement of an annuity the exchange or replacement is suitable including taking into consideration whether:

(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fee or charges for riders and similar product enhancements;

(ii) the consumer would benefit from product enhancements and improvements; and

(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(2) Prior to the execution of a purchase, replacement, or exchange of an annuity resulting from a recommendation, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as permitted under Subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a) Except as provided under Subsection (4)(b),

neither a producer nor an insurer shall have any obligation to a consumer under Subsection (1) or (3) related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) a consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(iv) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or producer.

(b) An insurer's issuance of an annuity subject to Subsection (4)(a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) A producer or, where no producer is involved, the responsible insurer representative, shall at the time of sale:

(a) make a record of any recommendation subject to Subsection (1);

(b) obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's or insurer's recommendation.

(6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule, including the following:

(i) the insurer shall maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals;

(ii) the insurer shall establish standards for producer product training and shall maintain reasonable procedures to require its producers to comply with the requirements of Section R590-230-6;

(iii) the insurer shall provide product specific training and training materials that explain all material features of its annuity products to its producers;

(iv) the insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(v) the insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(vi) the insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under Subsection (6)(a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section R590-230-7 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subsection (6)(b)(ii).

(ii) An insurer's supervision system under Subsection (6)(a) shall include supervision of contractual performance under this Subsection. This includes the following:

(A) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) annually obtaining a certification from a senior manager, who has responsibility for the contracted functions that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(iii) An insurer is not required to include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) A producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) truthfully responding to an insurer's request for confirmation of suitability information;

(b) filing a complaint; or

(c) cooperating with the investigation of a complaint.

(8)(a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this rule. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commissioner's ability to enforce, including investigate, the provisions of this rule.

(b) For Subsection(8)(a) to apply, an insurer shall:

(i) monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(ii) provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

R590-230-6. Producer Training.

A producer may not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training.

R590-230-7. Compliance Mitigation and Penalties.

(1) An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its producer's, violation of this rule;

(b) a producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this rule; and

(c) appropriate penalties and sanctions.

(2) Any applicable penalty under 31A-2-308 for a violation of this rule may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

R590-230-8. Records.

Insurers and producers shall maintain or be able to make

available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

R590-230-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 60 days from the rule's effective date.

R590-230-10. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: insurance, annuity suitability
March 26, 2012 31A-2-201
Notice of Continuation May 23, 2019 31A-22-425

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq.

3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing the Order for Answer to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to

the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

a. Petitioner may seek relief from the medical examination detailed above in subsection 3., and the administrative law judge may provide such relief, upon the showing by the petitioner of an unreasonable demand by respondent related to such medical examination.

b. Respondent shall send any questionnaire, consent or release forms requested by the examining physician or insurance carrier to petitioner at least 14 days prior to the scheduled medical examination.

c. After a reasonable attempt between the parties to resolve any issues which may arise due to the forms in subpart b. above, petitioner shall file any objections to any questionnaire, consent or release forms requested by the examining physician or insurance carrier, with the administrative law judge at least seven days prior to the scheduled medical examination.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

10. Notwithstanding the disclosures required under Rule 602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical

record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than two hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions shall be filed within 10 days from the date the motion was filed with the Division. Reply memoranda shall be filed within 5 days from the date a response was filed with the Division.

K. Motions - Length and Type

1. Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by the Administrative Law Judge.

L. Orders on Continuances.

The Administrative Law Judge may rule, ex parte, on requests for continuances.

M. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

N. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

O. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. Objections and Responses.

1. Time. A written Objection to a medical panel report shall be due within 20 days of the date the medical panel report is served on the parties. A Response to an Objection shall be filed within 10 days from the date the Objection was filed with the Division. A Reply to an Objection shall be filed within 5 days from the date the Response is filed with the Division.

2. Length. Without prior leave of the Administrative Law Judge, Objections shall not exceed 10 pages. Responses shall not exceed 7 pages, and Replies shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

3. Other than one Objection and one Response and one Reply, no other memoranda shall be considered without prior leave of the Administrative Law Judge.

4. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $125 per half hour for medical panel members and $137.50 per half hour for the medical panel chair.

R602-2-5. Timeliness of Decisions.

A. Pursuant to Section 34A-2-801, the Commission adopts the following rule to ensure decisions on contested workers' compensation cases are issued in a timely and efficient manner.

1. This rule applies to all workers' compensation adjudication cases and motions for review filed on or after July 1, 2013.

B. Timeliness standards.

1. The Adjudication Division will issue all interim decisions and all final decisions within 60 days of the date on which the matter is ready for decision unless the parties agree to a longer period of time or issuing a decision within 60 days is impracticable. The Division will maintain a record of those cases in which a decision is not issued within 60 days.

2. The Commissioner or Appeals Board will issue all decisions on motions for review within 90 days of the date on which the motion for review is filed unless the parties agree to a longer period of time or issuing a decision within 90 days is impracticable. The Commission will maintain a record of those cases in which a decision is not issued within 90 days.

C. Yearly Report

1. The Commission shall annually provide to the Business and Labor Interim Committee a report that includes the following information:

a. The number of cases for which an application for hearing was filed during the previous calendar year;

b. The number of cases for which a Division decision was not issued within 60 days of the hearing;

c. The number of cases for which a decision on a motion for review was not issued within 90 days of the date on which the motion for review was filed;

d. The number of cases for which an application for hearing was filed during the previous year that resulted in a final Commission decision issued within 18 months of the filing date; and

e. The number of cases for which an application for hearing was filed during the previous year that did not result

in a final Commission issued within 18 months of the filing date and the reason such a decision was not issued.

D. Commission decisions might not be issued within these timeframes if doing so is impracticable.

1. For purposes of this rule, "impracticable" may include but is not limited to:

a. Cases that are sent to a medical panel;

b. Cases in which the hearing record is left open at the request of one or more of the parties or by order of the ALJ;

c. Cases in which one or more parties file post-hearing motions or objections;

d. Cases in which the parties request mediation or an extension of time to pursue settlement negotiations;

e. Cases in which due process requires subsequent or additional adjudication;

f. Cases in which a claimant is required to amend the application for hearing or in which a respondent is required to amend a response or answer; or

e. Cases in which an appellate decision related to the pending case or a similar case may have bearing on the pending case.

E. The Commission will receive the motion for review immediately after the motion is filed with the Adjudication Division.

1. Preliminary evaluation: motions for review.

a. Immediately upon transfer of a motion for review from the Adjudication Division to the Commission, staff will review the ALJ's decision and the motion for review. Responses will be reviewed as they are submitted. Based on that review, staff will prioritize cases for decision in the following order:

i. Cases with statutory mandates to issue quick decisions, such as requests to eliminate or reduce temporary disability compensation.

ii. Cases that require an immediate decision in order to allow the underlying adjudicative proceeding to proceed.

iii. Cases that can be resolved without research or extensive decision-writing.

iv. Cases that need to be decided in a timely manner by the Appeals Board in order to be completed within 90 days.

b. If none of these factors are present, cases will be completed in the order they are received, with the oldest cases receiving priority.

KEY: workers' compensation, administrative procedures, hearings, settlements
May 8, 2019 34A-1-301 et seq.
Notice of Continuation May 9, 2017 63G-4-102 et seq.

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code -- 2017.

1. Section I Rules for Construction of Power Boilers.

2. Section IV Rules for Construction of Heating Boilers.

3. Section VIII Rules for Construction of Pressure Vessels.

B. Power Piping ASME B31.1 -- 2016.

C. Controls and Safety Devices for Automatically Fired Boilers (Applicable to boilers with fuel input ratings greater than or equal to 4000,000 btu/hr) ASME CSD-1-2015. Except:

1. Part CG-130(c).

D. National Board Inspection Code ANSI/NB-23 - 2017 Part 3.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2015.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Tenth Edition, 2014. Except:

1. Section-8, and

2. Appendix-A.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of

boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

1. Boiler inspection frequency shall be pursuant to 34A-7-103.

2. Pressure Vessel inspection frequency shall be as follows:

a. Heat exchangers that operate from high pressure steam or high temperature water plants shall be inspected every twenty-four (24) months.

b. Autoclaves that operate above 15 psi steam pressure shall be inspected every twenty-four (24) months.

c. All other pressure vessels which fall under the jurisdiction of the Division shall be inspected every forty-eight (48) months.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. For boilers or pressure vessels inspected by an inspector employed by the Division, the owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. For boilers or pressure vessels inspected by a deputy inspector employed by an insurance company, the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located is subject to the agreement between the insurance company and the owner or operator of the boiler or pressure vessel. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(2)(a) and 63G-4-201(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

R616-2-15. Deputy Boiler/Pressure Vessel Inspectors.

A. Purpose -- Section 34A-7-10 of the Safety Act ("the Act"; Title 34A, Chapter 7, Part One, Utah Code Annotated) permits the Division of Boiler, Elevator and Coal Mine Safety ("the Division") to authorize qualified individuals to inspect boilers and pressure vessels as "deputy inspectors." This rule sets forth the Division's procedures and standards for authorizing deputy inspectors, monitoring their performance, and suspending or revoking such authority when appropriate.

B. Initial appointment of deputy inspectors.

1. An applicant for initial Division authorization to

inspect boilers and pressure vessels as a deputy inspector must satisfy the following requirements in the order listed below:

a. A company insuring boilers and pressure vessels in Utah ("sponsoring employer" hereafter) must submit a letter to the Division certifying that:

i. the applicant is employed by the sponsoring employer; and

ii. the sponsoring employer requests the Division authorize the applicant to inspect boilers and pressure vessels insured by that employer;

b. The applicant or sponsoring employer must submit to the Division a current, valid certification from the National Board of Boiler and Pressure Vessel Certification ("National Board") that the applicant is qualified to inspect boilers and pressure vessels;

c. The applicant or sponsoring employer must submit an application fee of $25 to the Division;

d. The applicant must complete training for deputy inspectors provided by the Division;

e. The applicant must pass an oral examination administered by the Division pertaining to boiler and pressure vessel inspection standards and processes; and

f. The applicant must pass a written, closed-book examination administered by the Division on the Division's boiler/Pressure Vessel Compliance Manual, Rules, and codes adopted;

2. Upon successful completion of the foregoing requirements, the Division will appoint the applicant as a deputy inspector and will issue credentials to that effect. The Division will also notify the sponsoring employer of the appointment.

3. Initial appointment as a deputy inspector terminates at the end of the calendar year in which such appointment is made unless a deputy inspector qualifies for reappointment under paragraph C of this rule.

C. Annual reappointment of deputy inspectors.

1. Effective January 1 of each year, the Division will renew the appointment of each deputy inspector for an additional year if the inspector satisfies the following requirements:

a. The individual was authorized to serve as a deputy inspector as of December 31 of the previous year;

b. A sponsoring employer has submitted a letter to the Division certifying that:

i. the individual is employed by the sponsoring employer; and

ii. The sponsoring employer requests the Division to reappoint that individual as a deputy inspector to inspect boilers and pressure vessels for that employer;

c. The individual or sponsoring employer has submitted to the Division a current, valid certification from the National Board establishing that the individual is qualified as a boiler and pressure vessel inspector;

d. The individual or sponsoring employer has submitted to the Division the required renewal fee of $20;

e. The individual has completed the Division's required training for deputy inspectors.

2. An individual who does not meet each of the foregoing requirements is not eligible for reappointment as a deputy inspector and must instead meet each of the requirements for initial appointment under paragraph B of this rule.

D. Lapse, change of employment and loss of National Board certification.

1. Lapse. An individual's appointment as a deputy inspector will lapse if the individual:

a. Does not renew the appointment by satisfying the requirements of paragraph C of this rule;

b. Does not perform and submit to the Division at least one boiler or pressure vessel inspection during the previous calendar year; or

c. Fails to inform the Division of any change in status of employment with his or her sponsoring employer as required in the following paragraph D.2. of this rule.

2. Change in employment.

a. A deputy inspector must immediately notify the Division in writing of any change in the status of the inspector's employment with his or her sponsoring employer.

b. If the Division determines that an individual previously appointed as a deputy inspector is no longer employed by a company authorized to insure boilers and pressure vessels in Utah, the Division will immediately revoke that individual's appointment.

c. If the Division determines that a deputy inspector has changed employment to another company that insures boilers and pressure vessels in Utah, the Division will require the new employer or deputy inspector to submit the following:

i. A letter from the new employer:

AA. certifying that the individual is employed by that sponsoring employer; and

BB. requesting that the individual's appointment as a deputy inspector be continued;

ii. A current, valid certification as a boiler/pressure vessel inspector from the National Board; and

iii. Payment to the Division of the required fee of $20.

3. National Board Certification.

a. Every deputy inspector shall at all times hold a current valid certification as a boiler/pressure vessel inspector from the National Board.

b. Each deputy inspector shall immediately notify the Division if his or her National Board certification has been revoked or suspended.

c. If the Division has reason to believe that a deputy inspector's National Board certification has been revoked or suspended, the Division will obtain written verification from the National Board. IF the National Board has in fact revoked or suspended the deputy inspector's certification, the Division will revoke the inspector's appointment as a deputy inspector.

E. Scope of authority. Appointment as a deputy inspector has the limited effect of authorizing the deputy inspector to inspect boilers and pressure vessels insured by his or her sponsoring employer for compliance with engineering codes and other standards adopted by the Division in Utah Administrative Code Rule R616-2. The Division expressly does not confer any other authority to deputy inspectors. Deputy inspectors remain employees of their respective sponsoring employers and are not employees of the Division or agents of the Division for any other purpose. A deputy inspector's right to inspect any particular boiler or pressure vessel, including the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located, is subject to the agreement between the sponsoring employers and the owner or operator of the boiler or pressure vessel. Appointment as a deputy inspector by the Division does not confer any right of entry independent from the terms of such agreement.

F. Inspection Standards

1. In inspecting any boiler or pressure vessel, a deputy inspector shall apply the standards and engineering codes adopted in Utah Administrative Code R616-2 - Boiler and Pressure Vessel Rules.

2. Each deputy inspector must use the Division's web-based applications to accurately record and submit all information regarding boilers and pressure vessels, including;

a. inspection reports;

b. scrapped and inactive items;

c. information changes other than those requiring submission of a Change of Insurance Status Form (NB4); and

d. a Web Issue Form (Form WIF-01) to identify any error or other issue resulting from the deputy inspector's use of the Division's web-based applications.

G. Quality Control. The Division will evaluate the performance of each deputy inspector to assure compliance with the Division's standards for boiler and pressure vessel inspections.

1. The Division's Business Analyst will review each inspection report submitted by a deputy inspector and will report any serious errors to the Chief Boiler and Pressure Vessel Inspector ("Chief Inspector") for appropriate action.

2. Each year, the Chief Inspector will evaluate a sample of each deputy inspector's inspections performed during that year for compliance with Division standards.

3. In addition to the reviews undertaken pursuant to paragraph G.2. of this rule, the Chief Inspector will also investigate any observation or report of an inspection deficiency to determine whether the deputy inspector complied with Division standards and rules in performing and reporting the inspection.

H. Corrective Action, Revocation and Right to Hearing.

1. If the Chief Inspector concludes that a deputy inspector does not satisfy requirements of this rule for continued appointment as a deputy inspector or has performed an inspection in a manner that is inconsistent with Division standards, the Chief Inspector will submit a written report and may recommend corrective action to the Division Director.

2. Depending on the circumstances and the seriousness of the situation, corrective action may include;

a. warning letter;

b. requirements for additional training;

c. requirements for retesting;

d. request review by the National Board;

e. additional supervision; and

f. revocation of appointment as a deputy inspector.

3. The Division Director shall forward a copy of the Chief Inspector's written report and any recommendation for corrective action to the deputy inspector and the sponsoring employer. If the deputy inspector or sponsoring employer dispute the report or recommended corrective action, the Division Director shall schedule time and place to conduct a hearing on the matter, such hearing to be conducted as an informal adjudicative proceeding under the Utah Administrative Procedures Act. After conducting such hearing, the Division Director will issue a written decision setting forth the material facts and ordering appropriate corrective action, if any. The Division Director shall forward a copy of the decision to the deputy inspector, sponsoring employer, and the National Board.

4. If the deputy inspector or sponsoring employer is dissatisfied with the Division Director's decision, the inspector or sponsoring employer may seek judicial review as provided by the Utah Administrative Procedures Act.

KEY: boilers, certification, safety
May 8, 2019 34A-7-101 et seq.
Notice of Continuation August 23, 2016

R657. Natural Resources, Wildlife Resources.
R657-46. The Use of Game Birds in Dog Field Trials and Training.
R657-46-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-14-19 and 23-17-9 this rule provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training.

R657-46-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Field trial" means an organized event where the abilities of dog handlers and their dogs and are evaluated, including the ability of the dogs to hunt or retrieve game birds.

(b) "Game bird" means:

(i) crane;

(ii) dusky, ruffed, sage, sharp-tailed, and spruce grouse;

(iii) chukar, red-legged, and gray partridges;

(iv) pheasant;

(v) band-tailed pigeon;

(vi) northern bobwhite, California, Gambel's, Montezuma, mountain, and scaled quail;

(vii) waterfowl;

(viii) common ground, Inca, mourning, and white-winged dove;

(ix) wild or pen-reared wild turkey of the following subspecies:

(A) eastern;

(B) Florida or Osceola;

(C) Gould's;

(D) Merriam's;

(E) ocellated; and

(F) Rio Grande; and

(x) ptarmigan.

(c) "Quad flyer test" means throwing pen-reared game birds by hand from four fixed stations and shooting of the pen-reared game birds one immediately after the other.

(d) "Train" or "training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.

R657-46-3. Application for a Field Trial Certificate of Registration.

(1)(a) A person may conduct a field trial using pen-reared game birds provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources, except as provided in Subsection (b).

(b) A person may conduct a field trial using pen-reared game birds on a commercial hunting area without obtaining a certificate of registration.

(2) Applications are available at any division office.

(3) The application must include written permission from the owner, lessee, or land management agency of the property where the field trial is to be conducted.

(4)(a) Applications must be submitted to the appropriate regional division office where the field trial is being held.

(b) Applications must be received at least 45 days prior to the date of the field trial.

(5) The division will not approve any application for an area where, in the opinion of the division, the field trial or the release of pen-reared game birds interferes with wildlife, wildlife habitat or wildlife nesting periods.

(6) Field trials may be held only during the dates and within the area specified on the field trial certificate of registration.

R657-46-4. Use of Pen-Reared Game Birds for Field Trials.

(1) Legally acquired pen-reared game birds may be possessed or used for field trials.

(2) Any person using pen-reared game birds must have an invoice or bill of sale in their possession showing lawful personal possession or ownership of such birds.

(3) Pen-reared game birds may not be imported into Utah without a valid veterinary health certificate as required in Rules R58-1 and R657-4.

(4)(a) Each pen reared game bird must be marked with an aluminum leg band or other permanent marking before being released in the field trial, except as provided in Subsection (d).

(b) Aluminum leg bands may be purchased at any division office.

(c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(d) Each pen-reared game bird used in a field trial that is conducted on a commercial hunting area may be released without marking each pen-reared game bird, as with an aluminum leg band.

(5) Pen-reared game birds used for a field trial may be released only on the property specified in the certificate of registration where the field trial is conducted.

(6) After release, pen-reared game birds may be taken:

(a) by the person who released the pen-reared game birds, or by any person participating in the field trial; and

(b) only during the dates of the field trial event as specified in the certificate of registration.

(7) Wild game birds may be taken only during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(8) Pen-reared game birds acquired for a field trial that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(9) Pen-reared game birds that leave the property where the field trial is held at the end of the field trial shall become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

R657-46-5. Use of Pen-Reared Game Birds for Dog Training.

(1) A person may train a dog using legally acquired pen-reared game birds provided:

(a) the person using the pen-reared game birds has an invoice or bill of sale in their possession showing lawful personal possession or ownership of the pen-reared game birds;

(b) each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released for training, except as provided in Subsection (3)(a);

(c) any pheasant released during training must be marked with a visible streamer or tape at least 12 inches in length before being released, and any pheasant killed during training must have the streamer or tape attached when killed; and

(d) the use of dogs complies with Rules R657-6. R657-9, and R657-54.

(2) Aluminum leg bands may be purchased at any division office.

(3)(a) Each pen-reared game bird used for dog training that is conducted on a commercial hunting area may be released without marking each pen-reared game bird with an aluminum leg band or other permanent marking.

(b) Any pheasant released during training on a commercial hunting area may be released without marking as provided in Subsections (1)(b) and (1)(c).

(4) The training may not consist of more than four dogs at any time, except the training may consist of more than four dogs provided:

(a) the dogs exceeding four in number are eight months of age or younger; and

(b) no live ammunition is in possession of the person or persons engaged in training the dogs.

(5) A person or group of persons may not release more than ten pen-reared game birds per day or three pen-reared game birds per dog per day, whichever is greater.

(6) A person or group of persons may not use more than three firearms at any time, except four firearms may be used when training retrievers using the American Kennel Club quad flyer test.

(7) Pen-reared game birds acquired for training that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(8) Pen-reared game birds that are not recovered on the day of the training or pen-reared game birds that escape shall become property of the state of Utah and may not be recaptured or taken, except during legal hunting seasons as specified in the Upland Game and Waterfowl proclamations of the Wildlife Board.

(9) A person training dogs on official dog training areas, designated by the division, is not required to comply with Subsection (1)(c) or Subsections (4), (5) or (6).

R657-46-6. Use of Wild Game Birds for Dog Training.

(1) A person may train a dog on wild game birds provided:

(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;

(b) the use of dogs complies with Rules R657-6. R657-9, and R657-54;

(c) the person training a dog on wild game birds, except during legal hunting seasons:

(i) may not possess a firearm, except a pistol firing blank cartridges;

(ii) must comply with city and county ordinances pertaining to the discharge of any firearm;

(iii) must obtain written permission from the landowner for training on properly posted private property.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

KEY: wildlife, birds, dogs, training
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Notice of Continuation May 20, 2019 23-14-19

R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-1-109, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2017 edition of the National Electrical Safety Code, C2-2017, as promulgated by the Institute of Electrical and Electronics Engineers, which is incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-2. Customer Relations.

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or

regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefore. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

F. Customer Complaints --

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-1-201, Complaints.

G. Service Interruptions --

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 2014 edition of the American National Standards for Electric Meters Code for Electricity Metering, ANSI C12.1-2014, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register any usage, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

4. Incorrectly-registering meter -- If a meter registers usage, but fails to register the correct amount of electric power or energy used by the customer for any reason, other than as described in Subsection R746-310-3(C)(1) and (2), the amount of such use will be estimated by the utility from the best available information, and billed for a period not exceeding twenty-four months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical energy, unless those supplying the energy have already installed instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 2011 edition of the American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz), ANSI C84.1-2011, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

R746-310-6. Line Extensions.

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.

R746-310-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

R746-310-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- If a utility is going to render a backbill it must do so within three months from the time the utility becomes aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax

deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

R746-310-9. Overbilling.

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;

2. use of an incorrect watt-hour constant;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a switched meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and

8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

R746-310-10. Preservation of Records.

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

KEY: public utilities, utility regulation, electric safety codes, electric utility industries

May 22, 2019	**54-3-1**
Notice of Continuation July 19, 2017	**54-3-7**
	54-4-1
	54-4-8
	54-4-14
	54-4-23

R805. Regents (Board of), University of Utah, Administration.
R805-3. Overnight Camping and Campfires on University of Utah Property.
R805-3-1. Purpose.

To set forth the regulations that govern camping and campfires on University property.

R805-3-2. Definitions.

A. "Campfire" means an outdoor fire, burned in the open or in a receptacle other that a furnace or incinerator, used for the cooking of food of providing personal warmth or for recreational purposes. "Campfire" does not mean a professionally manufactured barbeque grill operated in connection with an official University event.

B. "Camping overnight" means any of the following:

1. Sleeping, at any time between the hours of 11:00 p.m. and 8:30 a.m., outdoors, with or without bedding, sleeping bag, blanket, mattress, tent, hammock, or other similar protection, equipment or device;

2. Establishing or maintaining outdoors, at any time between the hours of 11:00 p.m. and 8:30 a.m., a temporary or permanent place for sleeping or cooking by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock, or other sleeping equipment or by setting up any cooking equipment, with the intent to remain in that location overnight.

"Camping overnight" does not include the following:

1. Waiting in line for the sale of tickets to an event that will take place on University property;

2. Tail-gating activities on University property within areas designated by the University that occur the night before or the night of a sporting event.

C. "University property" means the university campus and any other property owned, operated or controlled by the University of Utah.

R805-3-3. Policy.

A. Overnight Camping

In order to protect University property, and to protect the safety and health of the University community and the public, camping overnight on University property not specifically designated for such use is prohibited without first obtaining permission from the University Scheduling Office. Permission may be withheld by the University on any reasonable basis.

B. Campfires

In order to protect University property, and to protect the safety and health of the University community and the public, lighting or maintaining campfires on University property not specifically designated for campfires, in an approved receptacle, and consistent with state and local law, is prohibited without first obtaining permission from the University Scheduling Office. Permission may be withheld by the University on any reasonable basis.

C. Sanctions

1. University students, university staff and university faculty who violate this rule may be subject to disciplinary action pursuant to the applicable policies and procedures of the University of Utah Regulations Library.

2. Members of the public who violate this rule may be subject to one or more of the following sanctions:

1. Issuance of a citation for setting an improper fire pursuant to Section 65 A-8-211;

2. Issuance of a citation for criminal trespass pursuant to Section 76-6-206;

3. Issuance of citation and temporary eviction from, and denial of access to University property pursuant to Sections 76-8-701 through 76-8-718; and

4. Eviction from, and denial of access to, University property after an informal adjudicative proceeding pursuant to Rule R765-134.

KEY: camp, camping, campfire, fire

May 22, 2019	**53B-1-104(8)**
Notice of Continuation February 25, 2019	**53B-2-106**
	63G-4-102
	65A-8-211
	76-8-701 et seq.

R850. School and Institutional Trust Lands, Administration.
R850-5. Payments, Royalties, Audits, and Reinstatements.
R850-5-100. Authorities.

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Section 53C-1-302(1)(a)(ii) of the Utah Code entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures and rules for management of the agency.

R850-5-200. Payments.

Payments include rentals, royalties or any other financial obligation owed under the terms of a lease, permit or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of all parties to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. In order to fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in subsection 3 of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined herein by the next business day.

4. A $30 return check charge or the actual charge levied by the bank, whichever is greater, will be assessed on all checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing. If replacement funds are received after the required due date, R850-5-200(6) will be applied.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease/permit or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit or other contractual agreement will be subject to cancellation, forfeiture or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If all sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the agency may elect any of the remedies as outlined in R850-80-700(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or $30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in R850-5-300(2), within the time limit under which such payment is due.

7. Subject to R850-4-300, rental payments received after the due date which do not include a late fee may be returned to the lessee by certified mail, return receipt requested. Payment may only be accepted for the full amount due.

R850-5-300. Royalties.

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Failure to provide such a report may, after proper notification, subject the lease to cancellation. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described below, may not be accepted by the agency and may be returned.

i) Any report submitted 24 months after the royalty due date.

ii) Amendments to prior report periods creating a net adjustment of less than $10.

iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Actions, plus 4%.

R850-5-400. Audits.

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee/permittee/payor and to inspect the leased/permitted premises and conduct field audits for the purpose of determining whether there has been compliance with the rules or the terms of agreement.

R850-5-500. Reinstatements.

1. The director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the director without a written finding.

(d) Easements within 60 days of cancellation provided that:

i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to R850-30, R850-40-700(3), or R850-80 upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

KEY: audits, payments, reinstatements, royalties
June 1, 2019 53C-1-302(1)(a)(ii)
Notice of Continuation June 27, 2017

R850. School and Institutional Trust Lands, Administration.
R850-21. Oil, Gas and Hydrocarbon Resources.
R850-21-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and which govern the management of trust-owned lands and oil, gas and hydrocarbon resources.

R850-21-150. Planning

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated by UDOGM pursuant to Utah Administrative Code Rule R649.

R850-21-175. Definitions.

Except as specifically defined below, the definitions set forth at R850-1-200 shall be applicable. The following words and terms, when used in Section R850-21, shall have the following meanings:

1. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.

2. Assignment(s): a transfer of all or a portion of the lessee's record title or operating rights in a lease.

(a) Mass Assignment: an assignment that affects two or more leases and identifies the leases affected thereby on an attached exhibit to the assignment.

(b) Non-leasehold Assignment: an assignment that transfers an interest in a lease that is not record title or operating rights, for example, but not limited to, overriding royalty, net profits, or other production payments.

3. Certification of Net Revenue Interest: a written declaration of oath to the agency that must accompany assignments of record title or operating rights in leases issued beginning April 1, 2005, certifying that the total net revenue interest (NRI) in the lease has not been reduced to less than 80 percent of 100 percent NRI.

4. Designated Operator: the person or entity that has been granted authority through a Designation of Operator form to conduct operations on the lease or a portion thereof.

5. Diligent Operations: the continuation of drilling or re-working operations in the secondary term of the lease which are prosecuted in a timely and good and workmanlike manner to establish production or restore production of leased substances. Diligent Operations may include cessations of operations which do not exceed ninety (90) days in duration or a cumulative period in excess of one hundred eighty (180) days in a lease year without prior agency approval.

6. Effective Date: the date as defined in the lease.

7. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.

8. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending at midnight on the last day of the twelfth month.

9. Minimum Royalty: the minimum amount of money payable to the agency which accrues beginning in the first year of the secondary term of the lease or after first production is obtained. The amount due is calculated on the difference, if any, between the amount of the minimum royalty specified in the lease and the actual royalty paid from production in the lease year.

10. Operating Rights Interest: the interest or contractual obligation created out of a lease that authorizes the operating rights interest owner to enter upon the leased land to conduct drilling, production and other related operations. Operating rights interest may be stratigraphically limited.

11. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with Section 53C-2-401-(1)(d)(ii)and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for joint ventures, farmout agreements, exploration agreements, or other agreements for the disposition of hydrocarbon deposits on trust lands.

12. Paying Quantities: unless otherwise defined in the lease, production that allows the lessee to realize a profit after deducting taxes, the agency's royalty, and the cost of the operations.

13. Record Title Interest: the primary ownership of a lease that includes the obligation to pay rentals, the rights to assign or relinquish a lease, and the ultimate responsibility to the agency for obligations under the lease. Record title interest to a lease may not be stratigraphically limited.

14. Rental: a sum of money as prescribed in the lease payable annually in advance to the agency on or before midnight on the last day of the lease year.

15. Shut-in Gas Well: a gas well that is physically capable of producing gas in paying quantities that cannot be marketed at a reasonable price due to lack of market or transportation facilities, the status of which has been confirmed through the filing of a completion report or other documentation with UDOGM.

16. Shut-in Gas Well Payment: beginning at the commencement of the secondary term of the lease, the amount of money accruing and payable to the agency, in addition to other obligations defined in the lease, when gas is not being sold or marketed from the lease for a shut-in gas well.

17. Spud: the first boring of a hole in the drilling of a well and continuation of operations until surface casing is set.

18. UDOGM: the Division of Oil, Gas, and Mining of the Department of Natural Resources of the State of Utah.

R850-21-200. Classification of Oil, Gas and Hydrocarbons.

Oil, gas and hydrocarbon leases may cover oil; natural gas, including gas producible from coal formations or associated with coal-bearing formations; natural gas liquids; other hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form); sulfur; helium; and other gases not individually described. The oil, gas and hydrocarbon category shall not include coal, oil shale, asphaltic-bituminous sands or gilsonite.

R850-21-300. Lease Application Process.

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified applicants as set forth in R850-3-200 for the development of oil, gas and hydrocarbon resources.

2. Competitive Leasing.

The director may designate lands for bidding by electronic means as a vehicle for competitive leasing. Electronic bidding may be in addition to, or in place of, the bidding processes set out at Section 53C-2-407 at the discretion of the director. A list of available land and a link to the bidding form and procedure will be provided at the agency website.

(a) Competitive Bid Offering: when the agency designates lands for competitive bidding, it shall award leases on the basis of the highest bonus bid per acre made by a responsible, qualified bidder.

(b) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leases shall not be less than $1.00 per acre or fractional acre thereof, as set by the director.

(c) Notice of Offering: notices of the offering of lands for competitive bid shall:

(i) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office or online;

(ii) provide the legal description of the land;

(iii) state the last day on which bids may be received.

(d) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(e) Awarding of Leases: the winning bid shall be disclosed in the agency's office at 10 a.m. on the first business day following the last day on which bids may be received.

3. Non-Competitive Leasing.

(i) the director may designate lands for non-competitive leasing if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date the competitive sale closed for which no bids were received. The procedure for non-competitive leasing will be posted on the agency website.

(ii) where two or more applications for the same lease contain identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.

4. Other Business Arrangement.

(i) the agency may, with board approval, enter into joint ventures, farmout agreements, exploration agreements, or other agreements for the development of oil, gas and hydrocarbon resources if the agency deems it is in the best interest of the trust to do so.

(ii) The application for an OBA must be written and directed to the Assistant Director for Oil and Gas for review on a case-by-case basis.

R850-21-400. Availability of Lands for Lease Issuance.

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the land the agency owns is less than the whole of a quarter-quarter section or surveyed lot, in which case the lease will be issued only on the entire area owned by the agency.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range, unless a waiver is approved by the director.

R850-21-500. Lease Provisions.

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Rentals and Credits.

(a) The rental rate shall not be for less than $1 per acre, or fractional acre thereof, per year, at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than $500.00.

(c) Rental payments must be received on or before the end of the lease year notwithstanding R850-5-200(3), unless otherwise stated in the lease.

(d) Any overpayment may, at the option of the agency, be credited toward the lease account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Continuance of a Lease After Expiration of the Primary Term.

Unless otherwise provided in the lease, a lease shall be continued after the primary term has expired so long as:

(a) the leased substance is being produced in paying quantities from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(b) the agency determines that the lessee or designated operator is engaged in diligent operations which are determined by the director to be reasonably calculated to restore production of the leased substance from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(c) subject to the requirements of R850-21-500(4), if the leased trust lands, or lands pooled therewith, contain a shut in gas well capable of producing paying quantities and lessee makes all payments required by the lease.

3. Pooling, Communitization or Unitization of Leases.

(a) Upon prior written authorization of the director, lessee may commit the leased trust lands or portions of such lands to units, or cooperative or other plans of development under such conditions as the director may prescribe.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, or cooperative or other plan of development.

(c) Production allocated to the leased trust lands under the terms of a unit, or cooperative or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) Lease payments for leases included in any unit, cooperative or other plans of development shall be at the rate specified in the lease, subject to change at the discretion of the director or as may be prescribed in the terms of the lease.

(e) For active leases in a validated federal or state unit as of the effective date of these Rules that are either contracted out of such unit or upon unit termination which occurs before January 1, 2021, the agency will:

(i) grant a one-time, two (2) year extension from the date the lease was eliminated from the unit either by contraction or unit termination and so long thereafter as the leased substances are produced in paying quantities, or

(ii) continue the lease to the end of its primary term, whichever is longer.

4. Shut-in Gas Wells Producing Gas in Paying Quantities.

(a) To qualify as a shut-in gas well capable of producing in paying quantities:

(i) if the well is a new well, the operator must have filed with UDOGM a completion form or other documentation verifying that the well is capable of production in paying quantities, and if the well is an existing well, the operator must have obtained an approval of shut-in status from UDOGM; and

(ii) the lessee shall have complied with the lease terms providing the basis upon which the minimum royalty is to be paid for a shut-in gas well.

(b) The director may, at any time, require written justification from the lessee that the well qualifies as a shut-in gas well.

(c) A shut-in gas well will not extend a lease more than five (5) years beyond the original primary term of the lease unless otherwise extended at the discretion of the director.

5. Oil/Condensate/Gas/Natural Gas Liquids Reporting and Records Retention.

(a) Notwithstanding the terms of the lease, gas and natural gas liquid report payments are required to be received by the agency on or before the last day of the second month

succeeding the month of production.

(b) The extension of payment and reporting time for gas and NGLs does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production.

(c) Records of production, sales, transportation, and all other documents pertaining to the calculation of royalties shall be maintained for seven (7) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.

6. Other Lease Provisions.

(a) Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term, covenant or any applicable law or agency rule. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to R850-8-1000, in accordance with the provisions of the rules of the agency.

(b) When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form, the amended lease will retain the effective date of the original lease.

(c) The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary but which do not substantially impair the lessee's rights under the lease.

R850-21-600. Transfer by Assignment or Operation of Law.

1. Record Title or Operating Rights Transfer by Assignment. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however that:

(a) record title or operating rights assignments must be approved by the director. No record title or operating rights assignment is effective until approval is given.

(b) Any attempted or purported assignment of record title or operating rights made without approval by the director is void.

2. Non-leasehold assignments. Non-leasehold assignments of overriding royalty interests must be filed with the agency for record keeping purposes only. Other non-leasehold interest assignments may be filed with the agency for record keeping purposes only.

3. Requirements for Assignments.

(a) An assignment of either a record title or operating rights interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

(F) interest retained, if any; and

(G) a certification of net revenue interest, if applicable.

(b) Lessees who are assigning a record title or operating rights interest shall:

(i) prepare and fully execute the assignments, complete with acknowledgments;

(ii) require that all assignees execute the acceptance of assignment; and

(iii) submit the prescribed assignment fee.

(c) If approval of any assignment of record title or operating rights is withheld by the director, the assignee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to R850-8 or any similar rule in place at the time of such decision.

(d) An assignment shall be effective following approval by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if the assignment had not been executed until approval by the director. After approval by the director, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(e) An assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(f) Any assignment of record title or operating rights affecting leases issued beginning April 1, 2005, which would create a cumulative royalty and other non-working interest burdens in excess of twenty percent (20%) thereby reducing the net revenue interest in the lease to less than eighty percent (80%) net revenue interest shall not be approved by the agency. The agency reserves the right to void any assignment in which the certification of net revenue interest is found to be false and the assignment results in an aggregate burden in excess of 20% including the agency's retained royalty.

(g) Mass assignments are allowed, provided the requirements set forth in R850-21-600(2) are met.

(h) To the extent a legal foreclosure upon interests in leases occurs under the terms of a mortgage, deed of trust or other agreement, assignments must be prepared as set forth in this section and filed with and approved by the agency.

(i) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties. Agency approval does not estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

4. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs or devisees of the estate, as appropriate, upon filing of:

(i) a certified copy of the death certificate, together with other appropriate documentation to verify change of ownership as required under Section 75-1-101 et seq., such as a court order determining intestate heirs or letters testamentary and a deed by the personal representative of the estate;

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) a required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department

of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

R850-21-700. Plan of Operations and Reclamation.

1. Prior to conducting any operations that may disturb the surface of lands contained in a lease, the lessee or designated operator shall submit for approval simultaneously to the agency and to UDOGM, a plan of operations and must receive the approval of the plan by both agencies. Said plan shall include, at a minimum, all proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. The agency will review any request for drilling operations and will grant approval provided that the contemplated location and operations are not in violation of any rules or order of the agency. Agency approval of the plan of operations for oil, gas or hydrocarbon resources is required prior to approval by UDOGM, unless otherwise waived in writing to UDOGM by the agency.

2. Prior to approval of the plan of operations, the agency shall require the lessee or designated operator to:

(a) provide when requested, a cultural, paleontological or biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies; and

(b) when requested, provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease; and

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or other agreement for trust lands other than the leased lands where the use of said lands is necessary for the development of the lease.

3. During drilling operations, lessee or designated operator shall keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease and will deposit any geological data related to exploration drill holes with the agency upon request.

4. Oil and gas drilling, or other operations which disturb the surface of the leased lands shall require surface rehabilitation of the disturbed area as prescribed and as required by the rules and regulations administered by the agency and UDOGM.

All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from the disturbed area shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless consent of the agency to do otherwise is obtained. At the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM. All mud pits shall be filled and materials and debris removed from the site.

All topsoil in the affected area shall be removed, stockpiled, and stabilized on the leased trust lands until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency.

5. All lessees or designated operators shall be responsible for compliance with all laws, notification requirements, and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of other agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

R850-21-800. Bonding.

1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in the amount set forth in R649-3-1 et seq or any successor rule.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds.

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah. Surety company must maintain an A credit rating. Lessee or designated operator has thirty (30) days to cure a devalued rating, or lessee or designated operator will not be allowed to continue to work on the leased trust lands until a new surety bond has been filed and accepted by the agency;

(ii) Personal Bonds.

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(D) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least

thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(E) any other type of surety approved by the agency.

2. Bond Amounts.

The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a statewide blanket bond in the minimum amount of $15,000 covering exploration and production operations on all agency leases held by lessee; or

(b) a project bond covering an individual, single-well exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond shall not be less than $5,000.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.

(d) Any lessee or designated operator forfeiting a bond will be denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the amount of the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond that meets the requirements of this section is on file with another agency.

R850-21-1000. Multiple Mineral Development (MMD) Area Designation.

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Lessee shall give written notice to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit to the agency in advance written notice of any activities to occur within the multiple mineral development area and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Section 53C-2-405(4).

KEY: oil gas and hydrocarbons, administrative procedures, lease provisions, operations

June 1, 2019 53C-1-302(1)(a)(ii)

Notice of Continuation April 1, 2015 53C-2 et seq.

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) For an individual commencing employment as an ad valorem personal property auditor/appraiser before April 15, 2019 to qualify for this designation, an individual must, by April 15, 2021:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) For an individual commencing employment as an ad valorem personal property auditor/appraiser on or after April 15, 2019 to qualify for this designation, an individual must within 24 months of commencing that employment:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(c) 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 6 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) For a county of the first, second, third or fourth class, the measure of central tendency shall be within:

(A) 5 percent of the legal level of assessment for county-wide residential property; or

(B) 10 percent of the legal level of assessment for all other classes of property.

(ii) For a county of the fifth or sixth class, the measure of central tendency shall be within 10 percent of the legal level of assessment for all property.

(iii) 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 Subsections (2)(b) and (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	Percent Good

Acquisition	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. 2019 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	677
2)	Cache	582
3)	Carbon	451
4)	Davis	719
5)	Emery	427
6)	Iron	683
7)	Kane	357
8)	Millard	674
9)	Salt Lake	616
10)	Utah	641
11)	Washington	557
12)	Weber	694

(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	595
2)	Cache	497
3)	Carbon	359
4)	Davis	633
5)	Duchesne	417
6)	Emery	344
7)	Grand	332
8)	Iron	599
9)	Juab	380
10)	Kane	275
11)	Millard	592
12)	Salt Lake	529
13)	Sanpete	460
14)	Sevier	484
15)	Summit	393
16)	Tooele	381
17)	Utah	554
18)	Wasatch	416
19)	Washington	475
20)	Weber	608

(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	514
2)	Box Elder	468
3)	Cache	376
4)	Carbon	239
5)	Davis	509
6)	Duchesne	292
7)	Emery	216
8)	Garfield	181
9)	Grand	210
10)	Iron	475
11)	Juab	256
12)	Kane	152
13)	Millard	468
14)	Morgan	328
15)	Piute	285
16)	Rich	152
17)	Salt Lake	403
18)	San Juan	146
19)	Sanpete	338
20)	Sevier	360
21)	Summit	269
22)	Tooele	255
23)	Uintah	316
24)	Utah	425
25)	Wasatch	289
26)	Washington	349
27)	Wayne	281
28)	Weber	483

(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	424
2)	Box Elder	387
3)	Cache	292
4)	Carbon	153
5)	Daggett	162
6)	Davis	425
7)	Duchesne	205
8)	Emery	134
9)	Garfield	97
10)	Grand	127
11)	Iron	389
12)	Juab	170
13)	Kane	68
14)	Millard	380
15)	Morgan	243
16)	Piute	199
17)	Rich	70
18)	Salt Lake	312
19)	San Juan	66
20)	Sanpete	254
21)	Sevier	276
22)	Summit	185
23)	Tooele	174
24)	Uintah	234
25)	Utah	341
26)	Wasatch	206
27)	Washington	263
28)	Wayne	198
29)	Weber	395

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	586
2)	Box Elder	634
3)	Cache	586
4)	Carbon	586
5)	Davis	639
6)	Duchesne	586
7)	Emery	586
8)	Garfield	586
9)	Grand	586
10)	Iron	586
11)	Juab	586
12)	Kane	586
13)	Millard	586
14)	Morgan	586
15)	Piute	586
16)	Salt Lake	586
17)	San Juan	586
18)	Sanpete	586
19)	Sevier	586
20)	Summit	586
21)	Tooele	586
22)	Uintah	586
23)	Utah	644
24)	Wasatch	586
25)	Washington	693
26)	Wayne	586
27)	Weber	639

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	218
2)	Box Elder	216
3)	Cache	223
4)	Carbon	113
5)	Daggett	134
6)	Davis	226
7)	Duchesne	143
8)	Emery	118
9)	Garfield	89
10)	Grand	115
11)	Iron	225
12)	Juab	130
13)	Kane	93
14)	Millard	166
15)	Morgan	168
16)	Piute	163
17)	Rich	90
18)	Salt Lake	198
19)	Sanpete	167
20)	Sevier	172
21)	Summit	173
22)	Tooele	158
23)	Uintah	177
24)	Utah	214
25)	Wasatch	179
26)	Washington	195
27)	Wayne	147
28)	Weber	259

(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	47
2)	Box Elder	79
3)	Cache	100
4)	Carbon	42
5)	Davis	44
6)	Duchesne	47
7)	Garfield	41
8)	Grand	42
9)	Iron	42
10)	Juab	44
11)	Kane	41
12)	Millard	40
13)	Morgan	55
14)	Rich	41
15)	Salt Lake	47
16)	San Juan	45
17)	Sanpete	47
18)	Summit	41
19)	Tooele	45
20)	Uintah	47
21)	Utah	43
22)	Wasatch	41
23)	Washington	41
24)	Weber	68

(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	50
3)	Cache	70
4)	Carbon	13
5)	Davis	13
6)	Duchesne	16
7)	Garfield	13
8)	Grand	13
9)	Iron	13
10)	Juab	13
11)	Kane	13
12)	Millard	12
13)	Morgan	23
14)	Rich	13
15)	Salt Lake	15
16)	San Juan	17
17)	Sanpete	16
18)	Summit	13
19)	Tooele	13
20)	Uintah	16
21)	Utah	13
22)	Wasatch	13
23)	Washington	12
24)	Weber	38

(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	65
2)	Box Elder	63
3)	Cache	60
4)	Carbon	45
5)	Daggett	45
6)	Davis	52
7)	Duchesne	59
8)	Emery	61
9)	Garfield	66
10)	Grand	67
11)	Iron	64
12)	Juab	56
13)	Kane	65
14)	Millard	65
15)	Morgan	57
16)	Piute	77
17)	Rich	56
18)	Salt Lake	61
19)	San Juan	63
20)	Sanpete	54
21)	Sevier	56
22)	Summit	62
23)	Tooele	61
24)	Uintah	69
25)	Utah	56
26)	Wasatch	45
27)	Washington	56
28)	Wayne	75
29)	Weber	60

(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	20
2)	Box Elder	20
3)	Cache	19
4)	Carbon	13
5)	Daggett	12
6)	Davis	16
7)	Duchesne	16
8)	Emery	18
9)	Garfield	20
10)	Grand	19
11)	Iron	19
12)	Juab	16
13)	Kane	21
14)	Millard	21
15)	Morgan	18
16)	Piute	22
17)	Rich	17
18)	Salt Lake	18
19)	San Juan	21
20)	Sanpete	15
21)	Sevier	15
22)	Summit	17
23)	Tooele	17
24)	Uintah	24
25)	Utah	20
26)	Wasatch	14
27)	Washington	18
28)	Wayne	24
29)	Weber	17

(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	14
3)	Cache	12
4)	Carbon	11
5)	Daggett	10
6)	Davis	11
7)	Duchesne	12
8)	Emery	12
9)	Garfield	13
10)	Grand	13
11)	Iron	13
12)	Juab	12
13)	Kane	13
14)	Millard	13
15)	Morgan	11
16)	Piute	15
17)	Rich	11
18)	Salt Lake	13
19)	San Juan	14
20)	Sanpete	12
21)	Sevier	12
22)	Summit	12
23)	Tooele	12
24)	Uintah	16
25)	Utah	12
26)	Wasatch	11
27)	Washington	11
28)	Wayne	15
29)	Weber	12

(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. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option

Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59- 2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and

best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a)(i) through (iii).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property

in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For

traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall

include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-

1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

R884-24P-74. Changes to Jurisdiction of Mining Claims Pursuant to Utah Code Ann. Section 59-2-201.

(1) A mining claim shall be assessed by the county in which the mining claim is located if the commission determines that the mining claim is used for other than mining purposes.

(2) The owner of a mining claim may request that the mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a copy of the title to the mining claim;

(b) certification that all owners of the mining claim seek assessment by the county in which the mining claim is located;

(c) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(d) evidence that the mining claim is used for other than mining purposes.

(3) A county may request that a mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(b) evidence that the mining claim is used for other than mining purposes.

(4) Evidence that a mining claim is used for other than mining purposes is dependent on specific facts and circumstances and includes:

(a) evidence that the mining claim will be actively and solely used for other than mining purposes for more than a temporary period of time;

(b) evidence that a restrictive covenant or conservation easement prohibiting mining activities on the mining claim is recorded in the county where the mining claim is located;

(c) evidence that local zoning ordinances prohibit mining activities on the mining claim; or

(d) in the case where the mining claim has been used for mining activities at any time, the mining claim has been reclaimed as evidenced by the return of the mine reclamation bond to the owner of the mining claim by the Division of Oil, Gas, and Mining.

KEY: taxation, personal property, property tax, appraisals
May 17, 2019 **Art. XIII, Sec 2**
Notice of Continuation November 10, 2016 **9-2-201**
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
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59-2-303
59-2-303.1
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-514
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704

59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1308.5
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365
59-2-1703

R895. Technology Services, Administration.
R895-9. Utah Geographic Information Systems Advisory Council.
R895-9-1. Purpose.

The purpose of this rule is to establish an advisory council to coordinate statewide GIS data efforts for collection, creation, and access, and to mutual collaboration by state entities.

R895-9-2. Authority.

The rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act and Section 63G-3-201 of the Utah Rulemaking Act, Utah Code.

R895-9-3. Scope of Application.

(a) All agencies of the executive branch of state government including its administrative sub-units, except the State Board of Education, the Board of Regents and institutions of higher education, are to be included within the scope of this rule.

(b) This rule also provides for the organizational chairmanship and membership.

R895-9-4. Definitions.

(a) GIS data means any electronic data with location attributes that can be used by computer-based geographic information systems.

(b) GISAC means the Utah Geographic Information Systems Advisory Council established by this rule.

R895-9-5. Advisory Council Responsibilities.

(a) There is a geographic information system advisory council (GISAC) established and organized under the authority of the Chief Information Officer (CIO). The Council shall be chaired by the Manager of the Automated Geographic Reference Center (AGRC).

(b) The responsibilities of the council include:

(i) Serve as a coordinating and collaboration body for the collection, creation, and access of statewide GIS data, and;

(ii) Recommend to the State CIO any GIS policies or standards it believes should be considered by the CIO for implementation, and such as may need to be reviewed for promulgation as administrative rules.

(iii) Submit a progress report to the CIO by September 30 of each year.

R895-9-6. Council Membership and Organization.

(a) The Manager of the AGRC or designee.

(b) The Council shall meet bi-monthly or as determined by the Chair.

(c) The Council shall be composed of one GIS representative from each participating state entity, and such invited GIS representatives from local government, colleges/universities, and federal agencies as are selected by the chair.

R895-9-7. Rule Compliance Management.

A state executive branch agency's executive director, or designee, upon becoming aware of a violation, shall institute measures designed to enforce this rule. The CIO may, where appropriate, monitor compliance and report to an agency's executive director any findings or violations of this rule.

KEY: IT standards council, IT bid committee, technology best practices, repository
March 9, 2005 63F-1-206
Notice of Continuation May 2, 2019 63G-3-201

R909. Transportation, Motor Carrier.
R909-2. Utah Size and Weight Rule.
R909-2-1. Purpose and Applicability.

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. All commercial motor vehicle operators, and motor carriers engaged in the movement of over dimensional and overweight vehicles and loads must comply with permit conditions as specified in the Utah Size and Weight rule. These conditions apply to all over dimensional vehicles and loads.

R909-2-2. Authority.

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

R909-2-3. Definitions.

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Automobile transporter" is any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units. An automobile transporter shall not be prohibited from the transport of cargo or general freight on a backhaul, so long as it complies with weight limitations for a truck tractor and semitrailer combination.

(4) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(5) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(6) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(7) "Commercial vehicle" is as defined in Utah Code Section 72-9-102.

(8) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(9) "Department" means the Utah Department of Transportation.

(10) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(11) "Division" means the Motor Carrier Division.

(12) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(13) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(14) "Emergency vehicle" means a vehicle designed to be used under emergency conditions: to transport personnel and equipment; and to support the suppression of fires and mitigation of other hazardous situations.

(15) "Fixed axle" means an axle that is not steerable, self-steering or retractable.

(16) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(17) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(18) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(19) "Highway" any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(20) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(21) "Incidental" means transportation that occurs occasionally or by chance but does not exceed a distance of 20 miles.

(22) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-70, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.

(23) "Laden" means carrying a load.

(24) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceeds legal dimensions and operates on highways by permit for transporting divisible loads.

(25) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(26) "Manufactured home" a transportable factory-built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(27) "Manufactured mobile home" means a transportable factory-built housing unit built prior to June 15, 1976, in accordance with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(28) "Motor carrier" as defined in Utah Code Section 72-9-102.

(29) "MVR" means motor vehicle record.

(30) "MUTCD" means Manual on Uniform Traffic Control Devices.

(31) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(32) "Natural gas vehicle" means the vehicle's engine is fueled primarily by natural gas.

(33) "Non-divisible" any load or vehicle exceeding applicable length, width, or height or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment.

(34) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(35) "Pole trailer" every vehicle without motive

power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(36) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(37) "Quad axle group" means a group of four consecutive fixed axles.

(38) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(39) "Retractable axle" is an axle which can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(40) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.

(41) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the proceeding vehicle or vehicles.

(42) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(43) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(44) "Special event" means the movement of an over-dimensional load or vehicle.

(45) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(46) "Special truck equipment" or STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(47) "Spread axle" is two single axles that exceed 96 inches apart.

(48) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(49) "Tillerman/Steerman" is an individual who steers any axle of an articulated trailer.

(50) "Towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and 2 trailers or semitrailers.

(51) "Trailer transporter towing unit" means a power unit that is not used to carry property when operating in a towaway trailer transporter combination.

(52) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(53) "Triple trailer" means a tractor and three trailers of approximately equal length.

(54) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(55) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(56) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(57) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(58) "Turnpike doubles" means a tractor and two trailers of equal length.

(59) "UCR" means Unified Carrier registration.

(60) "Un-laden" means a vehicle is not carrying a load.

(61) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(62) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

R909-2-4. Legal Size Vehicle Dimensions.

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

(a) height: 14 feet

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor vehicle	45 feet	Measured from bumper to bumper.
Semi-Trailer	53 feet	A trailer may not exceed 53 feet.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered Automobile Transporter	80 feet or less	Stinger-steered Automobile transports are measured from bumper to bumper and may have a front overhang of 4 feet or less and a rear overhang of 6 feet or less, with a maximum vehicle length of 80 feet or less (excluding overhangs).
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates. US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.

All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet front 6 feet rear	Overhang may not carry any load extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.
Commercial delivery of light and lbs; or	82 feet or less	Consisting of a trailer transporter towing unit and 2 trailers or semitrailers with a total weight medium duty not to exceed 26,000 and in trailers which the trailers semitrailers carry no property and constitute inventory property of a manufacturer, distributer, or dealer of such trailers or semitrailers, may have an overall length limitation of 82 feet or less on a towaway trailer transporter combination.

R909-2-5. Legal Weight Limitations.

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated at more than:

TABLE 2

Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	must comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

(3) The weight limitation in Table 2 does not apply to a covered heavy-duty tow and recovery vehicle.

(4) Emergency vehicles may exceed the weight limits (up to a maximum gross vehicle weight of 86,000 pounds) of less than - 24,000 pounds on a single steering axle; 33,500 pounds on a single drive axle; 62,000 pounds on a tandem axle; or 52,000 pounds on a tandem rear drive steer axle.

(5) A natural gas vehicle may exceed any vehicle weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by any amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system.

R909-2-6. Tire Load Provisions.

(1) Except for steering axles, self-steering VLS and retractable axles, or wide based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 11,000 pounds shall have at least four tires per axle.

(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 33,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 22,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.

(2) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring a Divisible overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires that are greater than 11 inches but less than 14 inches shall have a weight limit not to exceed 5500 pounds;

(d) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(e) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

R909-2-7. Variable Load Axles.

(1) Vehicles with variable load axles are limited as follows:

(a) no more than three fixed axles shall be allowed in any group;

(b) retractable or variable load suspension axles installed after January 1990 shall be self-steering on power units or when augmenting a tridem group on trailers;

(i) Non-divisible loads may be exempt from these restrictions upon written approval from the division.

(c) no axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(d) Controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve shall be positioned outside of the cab and be inaccessible from the driver's compartment.

R909-2-8. General Oversize or Overweight Provisions.

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the appropriate permit must be obtained prior to operating within the State of Utah.

(2) Each oversize or overweight permit shall be carried in the vehicle or combination vehicles.

(a) The permit may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversize or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception. Length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated with an oversize or overweight permit.

(5) Liability of permittee. The applicant or permittee, as a condition for obtaining an oversize permit, shall assume all

responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee must agree to indemnify and hold harmless the department from any and all claims resulting directly or indirectly from the operation and transportation of vehicles or combination of vehicles operating under an oversize or overweight permit.

R909-2-9. Transfer or Replacement of Permits.

(1) Division personnel may transfer permits from one vehicle to another up to two times per permit for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within the same company;

(b) the customer has sold or purchased a vehicle;

(c) lease changes from one company to another by providing evidence of permit ownership; or

(d) the vehicle has become disabled.

(2) A transfer permit will be issued with the same expiration date as the original permit.

R909-2-10. Permit Revocation, Suspension and Confiscation.

(1) Violations of any permit that may result in the revocation, suspension or confiscation of the permit include, but are not limited to:

(a) speeding or driving faster than the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted and all the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

R909-2-11. Weather Travel Restrictions.

(1) No carrier shall operate a longer combination vehicle (LCV), a tractor trailer combination more than 81 feet cargo carrying length or a truck and two-trailer combination more than 92 feet measured bumper to bumper, when the following conditions exist:

(a) wind more than 45 m.p.h.;

(b) any accumulation of snow and ice on the roadway; or

(c) visibility less than 1,000 feet.

(2) No carrier shall operate an oversize vehicle or load more than 10 feet wide, 105 feet long, 10 feet front or rear overhang when the following conditions exist:

(a) any accumulation of snow and ice on the roadway; or

(b) visibility less than 1,000 feet.

R909-2-12. Curfew Congestion Restrictions.

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height, Monday thru Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

(a) all highways south of Perry Willard Interchange, I-15, Exit #357;

(b) all highways in Weber, Davis, and Salt Lake Counties;

(c) all highways in Utah County north of I-15, Exit #261;

(d) SR 68, North of mile post 16 in Utah County;

(e) I-80 East side of Salt Lake County mile post 139 to mile post 101 on the West side of Salt Lake County; and

(f) I-84 west of mile post 91.

(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

R909-2-13. Holiday Travel Restrictions.

(1) Travel is prohibited for loads more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height during the following holidays:

(a) Christmas Day;

(b) New Year's Day;

(c) Memorial Day;

(d) Independence Day;

(e) Labor Day; and

(f) Thanksgiving Day.

(2) Monday holidays and Monday observed holiday restrictions begin at 2:00 p.m. through midnight on the Friday prior to the holiday. Normal travel may resume from sunrise on Saturday through Sunday at midnight. Monday holiday restriction continues at 12:01 a.m. on Monday and ends Tuesday at sunrise.

(3) The division may authorize exceptions to the holiday travel restriction based on mitigating circumstances.

(4) The division may prohibit movement of oversize loads during days of anticipated high traffic volume such as those that occur during hunting seasons, other holidays, weather conditions, or special events.

R909-2-14. Night Time Restrictions.

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

(a) 14 feet 6 inches high;

(b) 10 feet wide;

(c) 105 feet in length; or

(d) overhang of more than 10 feet.

R909-2-15. Night Time Travel Provisions.

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet 6 inches high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night time travel provisions based on mitigating circumstances.

R909-2-16. Oversize Divisible Load Provisions.

(1) An oversize permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) the height of the combination or load does not

exceed 14 feet 6 inches;

(b) the width of the combination or load does not exceed 8 feet 6 inches;

(c) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight difference is greater than 4000 pounds; and

(d) drawbars exceeding 15 feet in length shall be marked with retro-reflective tape on half of the entire length of the drawbar on both the left and right side of the drawbar.

(i) The drawbar shall display an amber light visible from both the right and left side of the drawbar located near the center of the drawbar.

R909-2-17. Oversize Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

(i) 14 feet 6 inches in height,

(ii) 14 feet 6 inches in width, and

(iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads that exceed the weights identified in this section, R909-2-17.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 150 feet in length.

(a) Loads exceeding 10 feet wide and 150 feet long shall purchase a single trip permit.

R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.

(1) One pilot vehicle is required for vehicles or loads that exceed the following dimensional conditions:

(a) 12 feet in width on secondary highways for non-interstate, and 14 feet in width on divided highways for interstates;

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways;

(c) tow trucks that measure 165 feet or more in length; and

(d) overhangs of more than 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot escort vehicles are required for vehicles or loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways;

(b) 16 feet in width on divided highways;

(i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

(c) 120 feet in length on secondary highways;

(d) 16 feet in height on all highways; or

(e) when otherwise required by the division.

R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.

(1) Police escorts are required for vehicles with loads which exceed:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on all highways; or

(c) All loads more than 175 feet in length must have a minimum of one police escort;

(d) All loads more than 200 feet in length will require a minimum of two police escorts.

(2) The division may require police escorts based on extenuating circumstances.

R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang of more than three feet shall be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

(f) night time travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet 6 inches in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra-large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10-inch-high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are always clearly legible;

(h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

(i) oversize loads signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

(a) vehicle or load exceeds 10 feet in width;

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened to wave freely; and

(d) over dimensional flagging is not required on LCVs.

(4) Tow trucks that exceed 120 feet in length are required to:

(a) display one sign on rear most of towed vehicle.

(i) the sign must have a yellow background with 10 inch high black letters that are painted with 1 5/8 inches wide stroke to read: "IN-TOW LONG LOAD"; and

(ii) be 4 feet by 2 feet minimum.

R909-2-21. Convoys.

(1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the division with the following conditions:

(a) the number of permitted vehicles in the convoy shall not exceed two;

(b) loads may not exceed 12 feet wide or 150 feet overall length;

(c) distance between vehicles shall not be less than 500 feet or more than 700 feet;

(d) distance between convoys shall be a minimum of one mile;

(e) all convoys shall have a certified pilot escort in the front and rear with proper signs;

(f) police escorts or department personnel may be required;

(g) convoys must meet all lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or night time travel may be obtained by contacting the division, and exceptions may be granted by the division on a case by case basis.

R909-2-22. Trailers More Than 53 to 57 Feet in Length.

Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semiannual or annual permit. Trailers more than 53 feet must have LCV authority to purchase semi-annual and annual permits.

R909-2-23. Longer Combination Vehicles.

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor trailer or tractor trailer combination more than 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination more than 92 feet not to exceed 95 feet in length, 14 feet 6 inches in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet 6 inches, may not be transported on LCV's; and

(b) acceptable travel conditions exist in accordance with hazardous conditions for loads more than 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet, but requires LCV authority when exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

R909-2-24. Overweight Divisible Load Provisions.

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) The width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet 6 inches high;

(c) All axles weighing more than 11,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on all axles;

(b) super wide single tires that are 14 inches wide or greater;

(c) not to exceed 11,000 pounds per axle;

(d) the axle, groups of axles, and GVW do not exceed the bridge formula $W = 500(LN/(N-1) + 12N+36)$; and

(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.

(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.

(4) A divisible load permit may not be used to transport a non-divisible load.

(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross and bridge limitations do not exceed those specified on the permit.

R909-2-25. Overweight Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36).

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semiannual trip, or annual trip basis as described in Table 3:

TABLE 3

Single Trip, Semi-Annual Permits allowed up to:

Single Axle	29,000 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow trucks must be properly registered to purchase annual, semi-annual or single trip permits if they exceed legal weight limitations.

(a) The properly registered and/or permitted weight of the towed vehicle is not calculated in the tow trucks towed vehicles gross combined weight.

(b) Tow trucks must be properly registered and permitted for weight of tow truck and any additional weight placed upon it.

(c) If the towed weight is not properly registered and/or permitted, the towing vehicle will be responsible for the permitting and registration requirements of the towed vehicle.

(6) Vehicles transporting milk products may exceed the gross weight limit of 80,000 pounds or the maximum weight allowed by the Federal Bridge Formula. This requires an appropriate non-divisible permit issued by the Department.

(a) Milk products being carried using multiple trailers will be required to abide by divisible requirements and do not get the non-divisible exception.

R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.

(1) Loads exceeding 125,000 pounds gross, or axle weights in R909-2-24, may only purchase single trip permits.

(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36) or in accordance with the bridge table.

(3) 9 feet wide axles are allowed 7.5% more weight than 9 feet wide axles.

(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.

(5) When using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8-foot-wide axle group.

(6) All tires shall comply with the manufacturer's tire load rating as indicated on the tire side wall.

(7) All STE operations must have a STE profile sheet when the axle limitations specified in Table 3 or bridge table are exceeded.

R909-2-27. Mobile and Manufactured Homes.

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5-millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow Vehicles. Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes more than 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit more than 12 feet wide.

R909-2-28. Pilot Escort Requirements and Certification Program.

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman/steerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations that weighs more than 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent

revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Utah Code Sections 41-1a-201 and 41-1a-401.

(b) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(c) Trailers may not be towed at any time while in pilot escort operations.

(d) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is required.

(e) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an " OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8-inch-high by 1-inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so it is always clearly legible and readable by oncoming traffic; and

(d) the rear pilot escort vehicle shall display its sign so it is readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent illumination device approved by the division;

(d) three orange 18-inch-high cones;

(e) a flashlight with a minimum 1 1/2-inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;

(i) a fire extinguisher;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack and lug wrench;

(m) a handheld two-way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

(a) all officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than $750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must always be maintained during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of $750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge such as a department representative or a law enforcement officer;

(b) all documentation for authorized routing and

permit conditions is distributed to all appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

(a) name and address of entity;

(b) list of instructors;

(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and

(h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the UDOT Motor Carrier Division Customer Service/Superload team at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing over-size load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over dimensional loads;

(d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third-party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R-909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in R909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the division deems it necessary to insure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, except for the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. If the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

R909-2-30. Farmers, Implements of Husbandry and Agricultural Operations.

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side when:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet all other divisible load requirements in R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or his employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not more than 25 miles per hours, must always be equipped with a slow-moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible from a distance not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

R909-2-31. Snow Plow Operations.

(1) Blades more than 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.

(2) Snow plows with up to 12 feet wide blades may operate without oversize permits, when they comply with:

(a) lights which provide adequate illumination when the blade is in either the up, or down position;

(b) signaling lights shall not be obscured; and

(c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

R909-2-32. Parade Floats.

(1) Parade floats are not required to obtain an overweight or oversize permit, but they must meet the following requirements:

(a) all floats must have sufficient proof of insurance;

(b) all floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;

(c) the float driver must have a clear 360-degree visibility;

(d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and

(e) floats more than 14 feet 6 inches in height, must be routed by the division.

R909-2-33. Transportation of Utility Poles.

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with single trip, semi-annual or annual permit in accordance with:

(a) oversize load restrictions;

(b) pilot escort requirements;

(c) travel restrictions; and

(d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

(a) Upon company request, the permit may be issued to the truck or truck tractor.

(b) Utility poles exceeding 120 feet shall purchase a single trip, non-divisible oversize permit.

R909-2-34. Special Mobile Equipment.

(1) Special mobile equipment or SME refers to vehicles:

(a) not designed or used primarily for the transportation of persons or property;

(b) not designed to operate in traffic; and

(c) only incidentally operated or moved over the

highways.

(2) Special mobile equipment exempt from registration includes:

(a) farm tractors; and

(b) off road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway uses such as scrapers, loaders, off highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

(a) the distance traveled shall not generally exceed 20 miles;

(b) only daylight operations are authorized, and all oversize restrictions apply;

(c) weights must comply with the bridge formula for non-divisible loads;

(d) single axles equipped with single tires shall not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment shall be routed by the division.

(4) Special mobile equipment or SME affidavit. All persons who operate or cause to operate an SME exempt from registration shall submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and all required fields filled in. Affidavits will be available at all ports of entry. Affidavits shall be turned into a port of entry.

(b) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times;

(c) Vehicles that are not special mobile equipment shall register with the Utah State Tax Commission prior to operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

R909-2-35. Special Truck Equipment.

(1) The following vehicle configurations are considered special truck equipment:

(a) concrete pumper trucks;

(b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and

(c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversize or overweight permit when exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment shall be carried in the vehicle with the permit, when the axle limitations specified in R909-2-5 Table 2 or actual bridge or gross are exceeded.

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

R909-2-36. Port-of-Entry By-Pass Permit Provisions.

(1) A temporary by-pass permit may be issued to accommodate the multi-trip highway transportation needs to motor carriers who meet the following criteria:

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle must be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

BASIC	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply yearly.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R909-2-37. Annual Review of Permit Regulations and Conditions.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in April of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be incorporated into this rule.

KEY: permits, safety regulations, size and weight, trucks

December 12, 2018

Notice of Continuation May 22, 2019

72-1-201
72-7-406
72-9-303
41-1a-102
41-1a-231
41-1a-1206
72-7-402
72-7-404
72-7-407
72-9-301
72-9-502

R926. Program Development.
R926-16. Unsolicited Proposals for Transportation Infrastructure Public-Private Partnerships.
R926-16-1. Purpose and Authority.

(1) Purpose. This rule provides a procedure for submitting, screening, evaluating, and implementing unsolicited proposals to form Transportation Infrastructure public-private partnerships (TIPPPs); soliciting proposals to compete with an unsolicited proposal based on concepts within the unsolicited proposal; and excluding unsolicited proposals covered specifically by other rules or that are the responsibility of other state entities.

(2) Authority. The provisions of this rule are authorized by Utah Code Sections 72-1-201(1)(h) and 63G-6a-712.

R926-16-2. Definitions.

Except as otherwise stated in this rule, terms used in this rule are as defined in the applicable Statutes. The following additional terms are defined for this rule:

(1) "Days" means calendar days.

(2) The "Department" means the Department of Transportation.

(3) "Proposer" means private entities that submit letters of interest, qualifications, or proposals under a solicitation for the purposes of entering into a public-private partnership agreement with the Department, and may include a person or persons, firms, partnerships or companies or any legal combination or consortium thereof.

(4) "Submitter" means a private entity that submits an unsolicited proposal that complies with the requirements of Utah Code Section 63G-6a-712.

(5) "Transportation Infrastructure" means any infrastructure element that is associated with the state transportation system and is the responsibility of the Department.

R926-16-3. Unsolicited Proposal Requirements.

(1) The Department is not required to accept, review, or evaluate an unsolicited proposal.

(2) Should the Department accept delivery of an unsolicited proposal it will provide an acknowledgement of receipt to the submitter, but has no obligation to consider, evaluate, or advance an unsolicited proposal.

(3) Unsolicited Proposals for TIPPPs must be submitted to the Department using the system the Department has established to accept solicited proposals. An unsolicited proposal submittal must, at a minimum, include:

(a) a statement establishing the period during which the unsolicited proposal will remain valid, which may be not less than 12 months following initial delivery. A renewal statement may be required as determined solely by the Department;

(b) information required for unsolicited proposals set forth in Utah Code Section 63G-6a-712;

(c) a map indicating the location of the proposed facility, when applicable;

(d) a description of the organizations representing the submitter and the organizations who would develop, finance, construct, operate and maintain the facility;

(e) a description of the submitter's plan for developing, financing, constructing, operating, maintaining, or any combination of these elements, including identification of any revenue needed to support the project and proposed debt or equity investment proposed by the submitter;

(f) a description of how the unsolicited proposal is consistent with the goals of the Department and addresses a demonstrated need for the State;

(g) an estimate of the amount of funding, if any, to be provided by the State;

(h) a list of the major permits and approvals required by local, state, and federal agencies to develop or operate a project or facility resulting from an unsolicited proposal along with a projected schedule for obtaining the permits and approvals;

(i) a statement acknowledging that the Department has no obligation to advance or compensate a submitter for any environmental studies needed, including but not limited to NEPA, and other work associated with an unsolicited proposal;

(j) a description of the types of public utility facilities, if any, that may be impacted by a project originating from the unsolicited proposal and a statement of the plans to accommodate the impact;

(k) identification of any elements that are being claimed as trade secrets or confidential that meet the requirements of Utah Code Section 63G-2-309(1)(a)(i), together with justification of the same; and

(l) any additional information the Department determines is necessary to evaluate an unsolicited proposal. The submitter will be notified by the Department of any such additional information needed.

R926-16-4. Unsolicited Proposal Initial Threshold Review, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(1) Evaluation. The Department may appoint an individual or an evaluation committee, as it deems appropriate and after any required fee is paid, to conduct reviews of unsolicited proposals to determine whether to request competing proposals and qualifications, request additional information to facilitate further evaluation, or reject the unsolicited proposal.

(2)(a) Review Procedure. The review procedure for unsolicited proposals includes the initial threshold review followed by two additional stages of evaluation, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(b) The Department will make the decision to review or reject an unsolicited proposal and decisions regarding proceeding through the review procedure unilaterally, however, the Department will consult with the submitter prior to deciding to reject a proposal or move to the next stage in the review procedure.

(c) The Department will decide to reject a proposal or continue to the next stage in the review procedure within a reasonable time, but not more than 60 days after the date the proposal is received or the day an evaluation stage begins.

(d) The Department and the submitter may agree to extend a review period beyond 60 days after a consultation.

(e) The Department and the submitter must cooperate and proceed through the review procedure as expeditiously as practicable.

(3) Initial Threshold Review. The initial threshold review will consider whether the unsolicited proposal meets the minimum statutory and regulatory requirements, includes the required minimum content, and satisfies the definition of an unsolicited proposal. If the Department determines it will consider the unsolicited proposal further following the initial threshold review, the further review will be conducted in two stages, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(4) Stage One -- Screening. The Stage One -- Screening will be a summary review to determine whether the unsolicited proposal merits proceeding to Stage Two -- Detailed Evaluation.

(a) The Stage One -- Screening shall determine if the unsolicited proposal sufficiently addresses the following criteria:

(i) the proposal offers direct or anticipated benefits to the State;

(ii) is consistent with the Department's objectives and goals;

(iii) satisfies a need for the State that can be reasonably accommodated in annual long-term capital and operating budgets without displacing other planned expenditures, and without placing other committed projects at risk;

(iv) is not substantially duplicative of other projects that have been fully funded by the State, the Department, or any other public entity as of the date of the unsolicited proposal;

(v) would materially advance or accelerate the implementation of projects identified on the Statewide Transportation Improvement Program, Statewide Long-Range Transportation Plan or other strategic plan maintained by the Department;

(vi) is a project that advances the goals or objectives of a project identified in the Statewide Long-Range Transportation Plan;

(vii) offers goods or services that the Department may not have intended to procure or provide through the normal contract process;

(viii) is within the Department's jurisdiction and authority; and

(ix) has other benefits specific to the unsolicited proposal.

(b) The Department may reject proposals that do not meet the Stage One -- Screening criteria or generally fail to meet the minimum requirements established under statute and this rule or that the Department otherwise determines do not merit further review.

(c) The Department will complete the Stage One -- Screening and notify the submitter of its conclusions as follows:

(i) the unsolicited proposal fails to meet Stage One screening requirements, and in the sole discretion of the Department, it cannot be revised so that compliance is possible, or

(ii) further information is needed before the Department can determine whether to proceed with Stage Two -- Detailed Evaluation, or

(iii) the unsolicited proposal will be subject to Stage Two -- Detailed Evaluation, subject to the satisfactory receipt by the Department of additional information and receipt of the evaluation fee described in R926-16-7.

(5) Stage Two -- Detailed Evaluation. The purpose of the Stage Two -- Detailed Evaluation of the unsolicited proposal is to allow the Department to determine whether to issue a request for competing proposals and qualifications related to the unsolicited proposal.

(a) The Department will begin the Stage Two -- Detailed Evaluation upon the later of (i) the date of the receipt of any additional detailed information requested to supplement the unsolicited proposal, or (ii) the date of receipt of the evaluation fee described in R926-16-7.

(b) Where an unsolicited proposal is selected to proceed to Stage Two -- Detailed Evaluation, the Department may request from the submitter more detailed information regarding the unsolicited proposal. Additional detailed information requested for the unsolicited proposal may include:

(i) the types of support required from the State including facilities, equipment, property and personnel;

(ii) a sufficiently detailed description of the scope of work and commercial terms the submitter anticipates in the public-private partnership to allow the Department to assess the value provided;

(iii) a cashflow analysis showing capital, maintenance and operating costs and revenues;

(iv) conceptual finance plan; and

(v) form of a TIPPP (e.g., availability payment) and a schedule for implementation showing the dates for property or services to be provided by the State.

(c) The submitter must provide information to assist the Department to incorporate any concepts the submitter considers to be proprietary, confidential, or trade secret within the solicited procurement in a manner that will be acceptable to the submitter.

(d) The Stage Two -- Detailed Evaluation will consider the overall costs for delivery of the project over the term of the proposed agreement described in the unsolicited proposal and the proposed approached to financing and funding the project described in the unsolicited proposal, including potential revenue streams. Additionally, the Stage Two -- Detailed Evaluation will consider the potential risks and reasonableness of assumptions associated with implementing the proposal and modifications to project scope, risk allocation and commercial terms that would need to be incorporated within a solicited proposal.

(e) The Department will complete the Stage Two -- Detailed Evaluation, make its decision, and notify the submitter as follows:

(i) the unsolicited proposal (or certain concepts therein) is suitable to form the basis of a competitive solicitation. The Department intends to provide the submitter with the opportunity to discuss a potential solicitation. Subject to satisfactory conclusion of this discussion, the submitter will be waived from certain fees and requirements with respect to its response to a forthcoming competitive solicitation; or

(ii) the unsolicited proposal is not suitable to form the basis of a competitive solicitation. The Department does not intend to issue a competitive solicitation at this time. The submitter will not be excluded from participating in any future solicitation, and the Department will not waive any fees or requirements in response to a future solicitation.

(6) The Department may, in its sole discretion, adopt or reject concepts contained within an unsolicited proposal.

(7) The Department may, in its sole discretion, make significant modifications to the concepts in an original or updated unsolicited proposal.

(8) The Department will notify the submitter of the original or updated unsolicited proposal of the concepts it intends to adopt within a solicitation and will provide the submitter with a reasonable opportunity to object to the way such concepts are incorporated and to suggest modifications to avoid disclosure of content that the submitter considers proprietary, confidential or trade secret.

R926-16-5. Solicitation of Competing Proposals.

(1) The Department may, at any time, rather than rejecting the unsolicited proposal and terminating the process, elect to issue a request for competing proposals based on the unsolicited proposal, including modifications made consistent with subsection R926-16-4. If the Department issues a request for competing proposals, the submitter will be offered the opportunity to participate in the competition provided the submitter agrees in writing to continue participating throughout the entirety of the competition process. The process for soliciting competing proposals and qualifications must meet all requirements of applicable Utah law, including Utah Code Section 63G-6a-1402 and Sections 63G-6a-701-712.

(2) If the Department elects to move forward and issue a request for competing proposals, the Department will provide public notice of the proposed project according to subsection R926-16-6.

R926-16-6. Public Notice.

(1) Public notice regarding solicitations originating from R926-16-5 must be posted on the Department's website and must also be published in accordance with the requirements of Utah Code Section 63G-6a-112.

(2) Notice of a solicitation will indicate where, when, and how to obtain the solicitation documents, when responses are due and will generally describe the project scope or service desired and may contain other information such as the desired schedule or financial model.

(3) Where the executive director or a deputy director determines appropriate, the Department may require payment of a fee or a deposit for the supplying of the solicitation package.

(4) A copy of the solicitation documents will be made available for public inspection at the Department's primary offices in the Calvin Rampton Building.

R926-16-7. Fees Related to Unsolicited Proposals.

(1) As authorized by 63G-6a-712(5), the Department will assess fees to cover the actual costs of processing, considering, and evaluating unsolicited proposals as follows:

(a) a screening fee for every unsolicited proposal that passes the initial threshold review and enters the Stage One -- Screening process, and

(b) an evaluation fee for every unsolicited proposal that is subject to the Stage Two -- Detailed Evaluation.

(2)(a) The unsolicited proposal must be accompanied by a check for the screening fee, which must be a cashier's, certified, or official check drawn by a federally insured financial institution in the amount of $20,000 for the screening fee associated with the Stage One -- Screening. This check will be returned to the submitter if the unsolicited proposal does not pass the initial threshold review and will be drawn upon no earlier than 30 days after the Department responds to the submitter that it intends to proceed with the Stage One -- Screening.

(b) The Department will assess an evaluation fee for every unsolicited proposal that is subject to the Stage Two -- Detailed Evaluation. Evaluation fees must be paid by a cashier's, certified, or official check drawn by a federally insured financial institution in an initial amount of $20,000 plus .01% of the total estimated cost of design and construction of the project.

(c) The Department will provide the submitter with periodic updates of expenses and will request additional funds to cover the actual costs of processing, considering, and evaluating the unsolicited proposal if additional funds are needed.

(d) The submitter may elect to discontinue its pursuit of the unsolicited proposal at any time and avoid paying the additional funds. No refund will be issued for expenses already incurred.

(3) The executive director or a deputy director may waive or modify the fee structure for an unsolicited proposal, in whole or in part, if he or she determines that the Department's costs have been substantially covered by a portion of the fee or if it is otherwise determined a waiver or modification is reasonable and in the best interests of the State.

(4) When the Department solicits competing proposals, the Department may require each proposer that submits a competing proposal to submit a fee with the competing proposal. The amount of the fee will be identified in the solicitation documents and will not exceed the amount of the evaluation fee for the original unsolicited proposal stated in R926-16-7(2).

(5) The submitter that submitted the original unsolicited proposal triggering the solicitation will be exempt from this fee provided that, in the sole discretion of the Department, the requirements of the solicitation are sufficiently similar to the content of the original unsolicited proposal.

R926-16-8. Predevelopment Agreements.

(1) An unsolicited proposal may be used to establish a predevelopment agreement that may become a TIPPP. The first phase of a predevelopment agreement will result in a determination of feasibility and ultimately result in a project development plan and financing plan.

(2) An unsolicited proposal for the first phase of a predevelopment agreement shall include applicable elements from R926-16-3 and all of the following:

(a) overall approach to the predevelopment agreement process and a demonstration of how the project can be effectively and efficiently developed, financed and completed;

(b) proposed initial scope of work to advance and define a feasible project that can be ultimately scoped, priced and financing secured;

(c) relative responsibilities between the Department and the Proposer during the predevelopment agreement phase;

(d) the payment structure, terms and conditions under which the Proposer will be compensated for undertaking the predevelopment agreement scope of work; and

(e) schedule and milestones applicable to the predevelopment agreement scope activities.

(3) The subsequent phase or phases may be for all or a portion of the remaining services necessary to deliver the proposed project and may include, design services, construction services, operation or maintenance services, traffic, ridership and revenue estimates, financing and toll or user fee collection services, or any other requirement the Department deems necessary. Each subsequent phase will commence after the preceding phase has been completed.

(4) Award of the first phase will be based on the Department's competitive solicitation in accordance with R926-16-5, subject to R926-16-7.

(5) The entity awarded the first phase may have the first opportunity to submit a proposal for the subsequent phase or phases, as set forth in the predevelopment agreement. The entity awarded the first phase must provide all supporting documentation used to determine the scope, schedule, and cost in its proposal for each subsequent phase to the Department for review, along with any other information and requirements set forth in the predevelopment agreement.

(6) The Department may accept or reject the proposal. If the Department rejects the proposal, the Department may provide a counteroffer and/or negotiate with the entity awarded the first or prior phase, or in lieu of providing a counteroffer or if the negotiations are unsuccessful, choose to solicit competitive proposals for the subsequent phase or phases.

R926-16-9. Rights Related to Proposals; Release of Rights and Indemnification.

(1) A submitter of an unsolicited proposal will not obtain any claim or have any right or expectation to use any route, corridor, rights of way, public property or public facility by virtue of having submitted a proposal that proposes to use such route, corridor, rights of way, public property or public facility or otherwise, involves or affects such. By submitting an unsolicited proposal, a submitter thereby waives and relinquishes any claim, right, or expectation to occupy, use, profit from, or otherwise exercise any prerogative with respect to any route, corridor, rights of way, public property or public facility identified in the proposal as being necessary for or part of the proposed project.

(2) By submitting such a proposal, a submitter thereby waives and relinquishes any right, claim, copyright, proprietary interest or other right in any proposed location, site, route, corridor, rights of way, alignment, or transportation mode or configuration identified in the proposal as being involved in or related to the proposed project, and submitter must include in the proposal an indemnity that holds the state harmless against any such claim made by any entity that is a member of the proposer's proposal team, including their agents, employees and assigns.

(3) The waiver and release of rights in this section do not apply to a submitter's rights in any documents, designs and other information and records that are otherwise classified as protected records under Utah Code Section 63G-2-305 or 63G-2-309.

R926-16-10. Participation of Public Entities.

In order to ensure that the procurement process for TIPPPs originating from an unsolicited proposal remains fair and competitive, public entities will not be permitted to submit proposals or to participate as a member of proposer teams with respect to solicitations issued by the Department under this rule R926-16. Furthermore, so long as an active solicitation is outstanding for a transportation infrastructure public-private partnership agreement, the Department will not separately negotiate with a public entity for the project that is the subject of that solicitation.

KEY: transportation, highways, public-private partnerships, unsolicited proposals
May 8, 2019 **72-1-201**
63G-6a-712

R930. Transportation, Preconstruction.
R930-6. Access Management.
R930-6-1. Purpose.

(1) The purpose of this rule is to:

(a) maximize public safety;

(b) provide for efficient highway operations and maintenance of roadways;

(c) utilize the full potential of the highway investment.

(2) This rule serves to establish highway access management procedures and standards to protect Utah's state highway system. The state highway system constitutes a valuable resource and a major public investment. The Utah Department of Transportation (Department) has an obligation and a public-trust responsibility to preserve and maintain the state highway system, protect the public investment in this system, and to ensure the continued use of state highways in meeting state, regional, and local transportation needs and interests. This rule also serves to establish a procedure for allowing and establishing new or existing highways as limited-access facilities, for the elimination of intersections and for the right to access restricted facilities.

(3) The primary function of a state highway is to provide system continuity and efficiency of state highway system operation and maintenance activities. Utah Code Section 72-4-102.5. A state highway may provide access to property as a secondary function. The primary function of city and county roads is to provide access to property. Owners of property adjoining a state highway have certain rights of access unless such access has been restricted by purchase or by legal action. The Department recognizes that property owners have the right of reasonable access to their property. This rule establishes standards that balance the need for reasonable access to properties with the need to preserve the smooth flow of traffic on the state highway system in terms of safety, capacity, and speed.

(4) Failure to manage access to and from state highways can cause an increase in accidents, increased traffic congestion, decline in operating speed, loss of traffic carrying capacity, and increased traffic delays. This failure results in reduced traffic mobility, increased congestion, transportation costs and delays, and contributes to higher rates of property damage, personal injury, and fatal accidents. The proliferation of driveways, intersections, and traffic signals without regard to their proper design, location, and spacing degrades highway operation and performance and poses traffic hazards for the traveling public.

(5) It is a goal of the Department to improve public safety in the development, design, and operation of the state highway system. In exercising this public safety duty, the Department enacts this rule to limit the number of conflict points at driveway locations, separate highway conflict areas, reduce the interference of through-traffic, and adequately space at-grade signalized and unsignalized intersections. The Department works closely with property owners and local authorities to provide reasonable access to the state highway system that is safe and enhances the movement of traffic. The Department shall utilize all of the state highway right-of-way to the best advantage for highway purposes through a permit process that assesses the number, location, width, and design of connecting streets and driveways.

(6) This rule provides guidance to Department Permit Officers, local authorities, landowners, or developers for when a conditional access permit or encroachment permit is required, how to apply for a permit, what standards or guidelines are considered in the issuance of a conditional access permit and encroachment permits, and what to do when a variance is sought to deviate from the standards and requirements of this rule.

R930-6-2. Authority.

(1) This rule is authorized by the following sections of the Utah Code.

(a) Section 41-6a-216. Removal of plants or other obstructions impairing view - Notice to owner - Penalty.

(b) Section 41-6a-1701. Backing - When permissible.

(c) Subsection 72-1-102(11). "Limited-access facility" defined.

(d) Section 72-1-201. Creation of Department of Transportation - Functions, powers, duties, rights, and responsibilities.

(e) Section 72-3-109. Division of responsibility with respect to state highways in cities and towns.

(f) Section 72-4-102.5. Definitions - Rulemaking - Criteria for state highways.

(g) Section 72-6-117. Limited-access facilities and service roads - Access - Right-of-way acquisition - Grade separation - Written permission required.

(h) Section 72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law - Permit and fee requirements - Rulemaking - Penalty for violation.

(i) Section 72-7-103. Limitation on access authority.

(j) Section 72-7-104. Installations constructed in violation of rules - Rights of highway authorities to remove or require removal.

(k) Section 72-7-105. Obstructing traffic on sidewalks or highways prohibited.

(l) Section 72-7-503. Advertising - Permit required - Penalty for violation.

R930-6-3. Scope.

(1) This rule supersedes the following publications:

(a) "Regulations for the Accommodation of Utilities on Federal Aid and Non Federal Aid Highway Rights-of-way" - 1970.

(b) "Regulations for the Control and Protection of State Highway Rights-of-way" - 1982, and previous editions of this rule, "Accommodation of Utilities and the Control and Protection of State Highway Rights of Way" - 2006 and 2013.

(2) Utility accommodation in state highway right-of-way is governed by Rule 930-7.

(3) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

R930-6-4. Application.

(1) This rule applies to all state highways within the Department's jurisdiction.

(2) The Department may issue a conditional access permit and encroachment permit only when the application is found by the Department to be in compliance with this rule. The Department is authorized to impose terms, conditions and limitations as necessary and convenient to meet the requirements of this rule. In no event shall a conditional access permit or encroachment permit be issued or authorized if it is detrimental to the public health, welfare, and safety.

(3) This rule requires that installation or modification of access facilities to the state highway system be made by permit from the Department. This rule provides a description of information to be contained in the conditional access permit and encroachment permit application, the standards against which the application shall be measured, and the administrative relief offered by the Department to review the balance of private property rights of reasonable access versus the public need to preserve the smooth flow of traffic on the state highway system. The standards, procedures, and requirements of this rule are in addition to other county or municipal land use regulation

authority and apply to conditional access permit approvals on the state highway system. Local authorities may adopt similar policies or procedures for application of access management on other street systems.

(4) If any part or parts of this rule are held to be unlawful, such unlawfulness may not affect the validity of the remaining parts of this rule. Nothing in this rule shall be construed to disqualify the Department from receiving federal participation on any federal-aid highway project.

R930-6-5. Definitions.

(1) "AADT" means the Annual Average Daily Traffic, the average 24-hour traffic volume at a given location over a full 365-day year, divided by 365.

(2) "AASHTO" means the American Association of State Highway and Transportation Officials.

(3) "ADT" means the Average Daily Traffic, the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period. The Department may, at its own discretion, define the appropriate time period (including days of the week) to be considered when measuring or calculating ADT.

(4) "Acceleration lane" means a speed-change lane, including tapered areas, for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can more safely merge with through traffic.

(5) "Access" or "access connection" means any driveway or other point of entry or exit such as a street, road, or highway that connects to the general street system. Where two public roadways intersect, the secondary roadway is considered the access.

(6) "Access approval" see "conditional access permit."

(7) "Access category" is a classification assigned to a segment of highway that determines the degree to which access to a state highway is managed. It is also referred to as "category."

(8) "Access control" see "controlled access highway."

(9) "Access corridor control plan" specifies the limitation or management of driveways, streets or other access points which balance the need for reasonable access to land development with the smooth and efficient flow of traffic defined by safety, capacity, and travel speed. Also referred to as a "corridor agreement."

(10) "Access management plan" means a roadway design plan that designates access locations and their design for the purpose of bringing those portions of roadway included in the access management plan into conformance with their access category to the extent feasible.

(11) "Access operation" refers to the utilization of an access for its intended purpose and includes all consequences or characteristics of that process including access volumes, types of access traffic, access safety, time of the access activity, and the effect of such access on the state highway system.

(12) "Access spacing" means the distance measured from the inside point of curvature of the radius of an intersection or driveway to the inside point of curvature of the adjacent intersection or driveway radius. In the case of a flared curb driveway, the distance is measured from or to the inside driveway edge.

(13) "Access width" means the width of the traveled portion of the access as it extends away from the main highway. Access width measures only the travel portion of the access; it excludes auxiliary or turn lanes, transitions, radii, flares, and curb and gutter.

(14) "Agricultural access" means an access to undeveloped or agricultural property.

(15) "Applicant" means any person, corporation, entity, designee or agency applying for a permit. As used within this rule, applicant also refers to the property or project subject to a conditional access permit or encroachment permit application.

(16) "Application fees" means the latest application fees established by the Department and approved by the legislature. Application fees are non-refundable and are designed to offset access management application review costs.

(17) "Arterial highway" is a general term denoting a highway primarily for through traffic, usually on a continuous route.

(18) "Auxiliary lane" refers to the portion of the roadway adjoining the traveled way for speed change, turning, storage for turning, weaving, truck climbing, and other purposes supplementary to through traffic movement.

(19) "Bandwidth" means the time in seconds or the percent of traffic signal cycle between a pair of parallel speed lines on a time-space diagram that delineate a progressive movement. It is a quantitative measurement of the through traffic capacity of a signal progression system. The greater the bandwidth the higher the roadway capacity.

(20) "Capacity" means the maximum rate at which persons or vehicles can reasonably be expected to traverse a point or uniform section of a lane or a roadway during a given time period under prevailing roadway and traffic conditions. Capacity may refer to the entire roadway, a single lane, or an intersection. Measures of capacity may include, but are not limited to, traffic volumes, speed, throughput and density.

(21) "Channelizing island" means a defined area between traffic lanes for control of vehicle movements.

(22) "Clear roadside policy" refers to the policy employed by the Department to increase safety, improve traffic operations and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat and rounded as practical and as free as practical from physical obstructions above the ground, within the clear zone as defined in the AASHTO Roadside Design Guide and the Department's current standards and specifications, including Standard Drawing DD-17.

(23) "Clear zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. The desired width is dependent upon the traffic volumes and speeds and on the roadside geometry as referenced in the AASHTO Roadside Design Guide.

(24) "Conditional access permit" is the document that specifies requirements and conditions under which a driveway, or other access point, is approved, also referred to as an access approval. Unless specified, references to conditional access permits may also refer to temporary conditional access permits.

(25) "Control of access" means the condition where the right of owners of abutting land or any other persons having access to highway right-of-way is controlled by the appropriate public authority.

(26) "Controlled access highway" means a street or highway to which owners or occupants of abutting lands and other people have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway. See also "limited-access line" and "no-access line."

(27) "Contiguous property" means a parcel of land that has two or more adjoining properties abutting highway rights-of-way.

(28) "Corridor agreement" refers to a multi-agency cooperative agreement for managing the development, operations, and maintenance of a highway corridor or segment of highway corridor. In this rule, corridor agreements refer to agreements between the Department and one or multiple Local Authorities and are based on signal control plans and access corridor control plans agreed on and approved by the

Department and local authorities.

(29) "County roads" are all roads that are or may be established as a part of a county system of roads.

(30) "Deceleration lane" is a speed-change lane, including tapered areas, enabling a vehicle to leave the mainstream of faster moving traffic and to slow to a safe turning speed prior to exiting the highway.

(31) "Department" or "UDOT" mean the Utah Department of Transportation. Where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, Department or "UDOT" mean an authorized representative of the Utah Department of Transportation.

(32) "Department Region permitting office" refers to the permitting office of the Utah Department of Transportation regional offices.

(33) "DVH" means the design hour volume, an hourly traffic volume determined for use in the geometric design of highways. It is by definition the 30th highest hour vehicular volume experienced in a one-year period. The Department shall determine the appropriate DVH conditions. In most cases the Department will require the use of the peak hour volume as the DVH, typically in a range of 8-12 percent of AADT if actual volume data are not available. For rural areas and recreational routes, the Department will typically require the use of the 30th highest hour for DVH.

(34) "Design speed" means the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern as referenced in the most recent addition of the AASHTO "A Policy on Geometric Design of Highways and Streets."

(35) "Divided highway" means a highway with separated traveled ways for traffic in opposite directions, such separation being indicated by depressed dividing strips, raised curbing, traffic islands, or other physical barriers so constructed as to discourage crossover vehicular traffic.

(36) "Driveway" refers to an access constructed within the public highway right-of-way, connecting the public highway with the adjacent property. Driveway to highway connection designs may include, but are not limited to, curb cuts and radius curb returns.

(37) "Driveway angle" means the angle of the driveway alignment relative to the highway alignment. The driveway angle refers to the alignment of a driveway near and at the connection with the highway. The driveway angle is measured between the alignment of the driveway and the alignment of the highway traveled way.

(38) "Driveway spacing" means the distance between adjacent driveways on the side of the roadway as measured from near edge to near edge, considered necessary for the safe ingress and egress of vehicles and the safe operation of the highway at its posted speed.

(39) "Easement" is an interest in real property that conveys use, but not ownership, of a portion of an owner's property.

(40) "Encroachment" is the use of highway right-of-way.

(41) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right-of-way.

(42) "Expressway" is a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

(43) "Federal-aid highway" is a highway eligible to receive Federal aid.

(44) "FHWA" means the Federal Highway Administration.

(45) "Freeway" is an expressway with full control of access.

(46) "Freeway one-way frontage road" is a one-way public street that runs parallel to a freeway and provides direct freeway access through ramps that connect the freeway main lane and frontage road.

(47) "Frontage road" is a public street or road auxiliary to and normally alongside and parallel to the main highway, constructed for the purposes of maintaining local road continuity and the controlling of direct access to the main highway.

(48) "Full access" means that ingress and egress is afforded at the point of access. It does not mean full movement.

(49) "Full movement" means that all possible vehicle turning movements are afforded at the point of access.

(50) "Functional classification" refers to a classification system that defines a public roadway according to its purposes and hierarchy in the local or statewide highway system.

(51) "General street system" is the interconnecting network of city streets, county roads, township roads, and state highways in an area.

(52) "Grade separation" is a crossing of two roadways, a roadway and a fixed guideway, a roadway and a pedestrian walkway, or bike path in such a way that neither facility interferes with the operation of the other.

(53) "Gradient or grade" means the rate or percent change in slope, either ascending or descending from or along the highway measured along the centerline of the roadway or access.

(54) "Hierarchy of the roadway" refers to the functionality and the mobility flow of traffic across a system of highway facilities. The natural progression to flow from a highest order facility of high capacity and high operational speed serving major economic centers to the lowest order facility of low volume, low speed and serving multiple driveway connections.

(55) "Highway" is a general term for denoting a public way for the transportation of people, materials, and goods, including the entire area within the right-of-way. Also referred to as road.

(56) "Interchange" is a facility that provides ramps for access movements between intersecting roadways that are separated in grade. The ramps and any structures used to accomplish the movement of traffic between the roadways are considered part of the interchange.

(57) "Interchange crossroad access spacing" means the distance measured between the interchange ramp gore area (point of widening on the crossroad) and the adjacent driveway or street intersection.

(58) "Intersection" is the general area where two or more highways or streets join or cross at-grade.

(59) "Intersection sight distance" is the distance at which a motorist attempting to enter or cross a highway is able to observe traffic in order to make a desired movement. The required distance varies with the speed of the traffic on the main highway.

(60) "Interstate highway system" refers to the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments. It is also referred to as interstate.

(61) "Inventory" means the listing maintained by the Department that gives the access category for each section of state highway.

(62) "ITE" means the Institute of Transportation Engineers.

(63) "Lane" is the portion of a roadway for the movement of a single line of vehicles. It does not include the gutter or shoulder of the roadway.

(64) "LOS" means level of service, a qualitative

measure describing a range of traffic operating conditions such as travel speed and time, freedom to maneuver, traffic interruptions, and comfort and convenience as experienced and perceived by motorists and passengers. Six levels of service are defined from A to F, with A representing the free flow travel conditions and F representing extreme traffic congestion. LOS shall be evaluated according to the procedures and conditions defined in the most recent edition of AASHTO "A Policy on Geometric Design of Highways and Streets."

(65) "Limited-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to limit and control access across such lines and thereby preserve the functionality, operation, safety, and capacity of the highway system. The highest priority and consideration for access category spacing standards and design apply where limited-access lines exist. Also referred to as line of limited-access, limited-access highway, limited-access freeway or limited-access facilities (See Utah Code Section 72-1-102(11)).

(66) "Local authority" means the governing body of counties and municipalities.

(67) "Local road" includes any road or highway in public ownership that is not designated part of the Utah state highway system or as defined by Utah Code. It is also referred to as a "local street."

(68) "Median" means the portion of a roadway separating the traveled ways for opposing traffic flows.

(69) "Median island" means a curbed island that prevents egress traffic from encroaching upon the side of the drive used by ingress traffic. The island ensures that ingress traffic has the necessary maneuvering space.

(70) "MPH" means miles per hour, a rate of speed measured in miles per hour.

(71) "MUTCD" means the current Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(72) "No-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to disallow connections across such lines. No-access lines are of the highest priority and order of the state highway system and have been established to preserve and protect the functional operation of the adjacent facility. No-Access Lines are created through the purchase of access rights. The purchase of these access rights may utilize federal, state, or combination of federal and state funds. Also referred to as line of no-access or no-access facilities.

(73) "Peak hour" means the hour of the day in which the maximum volume occurs.

(74) "Permit" as referenced under this rule may include a conditional access permit or encroachment permit. Permits defined under this rule do not include other written permission that may be required by local authorities for utility work in the state highway right-of-way, and other permits referenced in other applicable rules.

(75) "Permit issuance date" means the date when the authorized Department official signs the permit electronically or by any other means.

(76) "Permittee" means any person, unit of government, public agency, or any other entity to whom a conditional access permit or encroachment permit is issued. The permittee is responsible for fulfilling all the terms, conditions and limitations of the conditional access permit or encroachment permit.

(77) "Person" means any individual, partnership, corporation, association, government entity, or public or private organization of any character other than a state agency , as noted in Section 63G-3-102(12).

(78) "Posted speed" means the maximum speed limit for a specified section of highway.

(79) "Public authority" means a public administrative agency or corporation authorized to administer a public facility.

(80) "Reasonable alternate access" refers to conditions where access to the general street system from a property adjoining a state highway can be achieved by way of another alternative including but not limited to a lesser function road, internal street system, or dedicated rights-of-way or easements. For example, where a subject property adjoining a state highway also adjoins or has access to an internal street system, such access shall be considered a reasonable alternate access and any access to the state highway shall be considered an additional access.

(81) "Relocate" means to remove and establish in a new place and may include, if necessary to conform a property's access to the provisions of this rule, merging or combining non-conforming access with other existing access so as to eliminate the non-conformance. In such event, the property owner or permittee, if applicable, may be required to remove all physical elements of the non-conforming access such as curb cuts and surfacing material and install curbing, barriers, or other physical separators to prevent continued use of the access.

(82) "Right-in right-out" refers to a type of three-way road intersection where turning movements of vehicles are restricted with only right turns allowed. Also refers to intersection or driveway movements restricted to right-turn ingress and right-turn egress movements only.

(83) "Right-of-way" is a general term denoting property or property interest, usually in a strip devoted to transportation purposes.

(84) "Road" see "highway."

(85) "Roadside" means the area between the outside shoulder edge and the right-of-way limits.

(86) "Roadway" means the portion of a highway, including shoulders, for vehicular use.

(87) "Rural" includes areas incorporated, or designated by census, with a population of less than 5,000.

(88) "Shared access" is an access point serving more than one parcel or landowner.

(89) "Shoulder" means the paved or unpaved portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles.

(90) "Signal" means a traffic control signal. It is also used to refer to a signalized intersection or traffic signal.

(91) "Signal control plan" is a comprehensive action plan for identification of signal locations along a corridor or segment of a corridor. The purpose of a signal control plan is to provide for efficiency of signal progression and corridor functionality. This is also referred to as a corridor agreement.

(92) "Signalization" means the installation or modification of a traffic control signal.

(93) "Signal progression" means the progressive movement of traffic at a planned rate of speed without stopping through adjacent signalized locations along a corridor or within a traffic control system.

(94) "Signal spacing" means the distance between signalized intersections measured from the centerline of a signalized intersection cross street to the centerline of the adjacent existing or future signalized intersection cross street. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and is thought to be one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Traffic signals that are closely or irregularly spaced bring about increases in the number of accidents, stops, delay, fuel consumption, and vehicular emissions. Long and uniform signal spacing allows for more efficient progression throughout the corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows.

(95) "Slope" means the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(96) "Speed" refers to the posted legal speed limit at the access location at the time of permit approval. A higher speed for access design must be used if the section of highway is presently being redesigned or reconstructed to a higher speed or an approved access control plan requires a higher speed.

(97) "Speed change lane" means a separate lane for the purpose of enabling a vehicle entering or leaving a roadway to increase or decrease its speed to a rate at which it can safely merge with or diverge from through traffic. Acceleration and deceleration lanes are speed change lanes.

(98) "State highway" includes those highways designated as state highways in Utah Code Title 72, Chapter 4, Designation of State Highways Act

(99) "Stewardship and oversight agreement" means the current agreement formalizing the roles and responsibilities of the FHWA, Utah Division and the Department in administering the Federal-Aid Highway Program. This agreement is available from the Department's website.

(100) "Stopping sight distance" means the distance required by a driver of a vehicle traveling at a given speed to bring the vehicle to a stop after an object on the roadway becomes visible. It includes the distance traveled during driver perception and reaction times and the vehicle braking distance.

(101) "Storage length" means the additional lane length added to a deceleration lane to store the maximum number of vehicles likely to accumulate in the lane during a peak hour period to prevent stored vehicles from interfering with the function of the deceleration lane or the through travel lanes.

(102) "Street" is a general term for denoting a public way or private way for purpose of transporting people, materials, and goods.

(103) "Street spacing" means the distance between intersections (signalized or unsignalized) measured as the distance between the leaving point of tangent of a street access to the receiving point of tangent of the adjacent street access.

(104) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. A major structure is a highway structure with a span or multiple span length of 20 feet or more measured along the centerline of the roadway and a minor structure is the same as a major structure except it is less than 20 feet.

(105) "Taper" means a transitional area of decreasing or increasing pavement width to permit the formation or elimination of an auxiliary lane.

(106) "Traffic control equipment" means equipment, including but not limited to, traffic control signs, traffic signal poles, circuitry and appurtenant equipment.

(107) "Temporary conditional access permit" is required from the Department whenever a temporary driveway or connection to a state highway is sought. A temporary conditional access permit shall expire within twelve months of the permit issue date or before as specified in the terms, conditions, and limitations of the temporary conditional access permit. No extensions may be granted. To reestablish a temporary access, the permittee or applicant shall submit a new conditional access permit application.

(108) "TIS" means traffic impact study, a study that may be required by the Department or local authorities that addresses the impacts of a proposed development, mitigation of impacts, access usage, or land use to ensure the efficient flow of traffic.

(109) "Traveled way" includes the portion of the roadway for the movement of vehicles.

(110) "Urban" refers to a census designated area with a population of 5,000 or more or any portion of a designated urbanized Metropolitan Planning Organization planning boundary.

(111) "Variance" is an authorized permission to depart from the standards and requirements of this rule. Variance requests are evaluated through the completion of the Department's Variance Request Form.

(112) "Warrant" is the criteria by which the need for a treatment or improvement can be determined.

(113) "Working day" includes any weekday in which a normal day of work can be performed exclusive of delays that result from inclement weather, labor disputes, and material shortages. It does not include weekends and legal holidays.

R930-6-6. Access Control.

(1) General.

(a) This section addresses general methods, requirements and limitations utilized to manage and control access to state highways.

(2) Access categories.

(a) Access category management system. This rule provides a system of ten highway access categories to which all sections of state highways have been or will be assigned.

(i) Each access category describes the function of the highways including the operational standards that are applied to maintain the highway's function in terms of mobility, capacity, traffic flow, and safety.

(ii) The access category is assigned based on, but not limited to, evaluation of the attributes and characteristics of whether or not the facility is a part of the National Highway System, FHWA functional classification, urban or rural designation, and posted speed.

(iii) The number, spacing, type, and location of accesses and traffic signals have a direct and often significant effect on the capacity, speed, and safety of the highway and are therefore managed by this category system which establishes a hierarchy of the roadway for access management.

(iv) The spacing and design standards for each category are necessary to ensure the highway functions at the levels expected for its assigned access category.

(v) The access management standards of this rule have been developed for segments or classifications of highways that have similar context and functions. Access Management standards have been established to achieve safety, capacity, and traffic flow objectives for each classification.

(vi) Implementation of the statewide access management requirements of this rule ensures equitable, uniform, consistent, and systematic application of access management standards.

(b) Access category description. The following describe the function and application of the ten access categories used to manage access to state highways:

(i) Category 1: Freeway/interstate system facilities (I).

(A) Category 1 is appropriate for use on highways that have the capacity for high speed and high traffic volumes over medium and long distances.

(B) These facilities serve major interstate, intrastate, and inter-regional travel demand for through traffic. In urbanized and metropolitan areas, they may also serve high volume and high-speed intra-city travel.

(C) All interstate and freeway facilities are included in this category.

(ii) Category 2: System priority-rural importance (S-R).

(A) Category 2 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 2 highways are designed and intended

to achieve a posted speed of 55 mph or higher in areas without signals and 45 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in rural areas.

(D) Direct access service to adjoining land is subordinate to providing service to through traffic movements.

(iii) Category 3: System priority-urban importance (S-U).

(A) Category 3 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 3 highways are designed and intended to achieve a posted speed of 50 mph or higher in areas without signals and 40 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in urban areas.

(D) Direct access service to abutting land is subordinate to providing service to through traffic movements.

(iv) Category 4: Regional-rural importance (R-R).

(A) Category 4 is appropriate for use on highways that have the capacity for moderate to high speeds (generally greater than 50 mph) and relatively high traffic volumes.

(B) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance in rural areas.

(v) Category 5: Regional priority-urban importance (R-PU).

(A) Category 5 is appropriate for use on highways that have the capacity for moderate speed (generally 45 mph or higher) and moderate to high traffic volumes.

(B) There is a balance between direct access and mobility needs within this category.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance and through urban areas that have significant potential for development or redevelopment.

(vi) Category 6: Regional-urban importance (R-U).

(A) Category 6 is appropriate for use on highways that have the capacity for moderate to low speeds (generally to a speed range of 40 mph or less) and moderate to high traffic volumes.

(B) While this category provides service to through traffic movements, it allows more direct access to occur.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of Interstate or system importance but through urban areas that are significantly developed to the point where travel speed and capacity has eroded.

(vii) Category 7: Community-rural importance (C-R).

(A) Category 7 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access. These facilities move both regional and local rural traffic but with emphasis on local movements such as those common on small city Main Streets.

(viii) Category 8: Community-urban importance (C-U).

(A) Category 8 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access.

(C) These facilities move traffic through a single community or to an adjacent community but not generally used for long distance (greater than five miles) travel.

(ix) Category 9: Other importance (O).

(A) Category 9 is appropriate for use on frontage roads, back roads, service roads, critical connections of short distance, and other special use facilities.

(x) Category 10: Freeway one-way frontage road (F-FR).

(A) Category 10 is appropriate for use on one-way frontage road systems that provide direct access to and from freeway ramps. Specifically, this category applies to the one-way frontage roads.

(B) Freeway main lane and ramp components of the freeway/frontage road systems must meet the criteria defined for Category 1 facilities.

(c) Access category assignments. To make category assignments for specific sections of state highways, the Department may consider adopted administrative and functional classifications, National Highway System routes, designated urban areas, existing and projected traffic volumes, posted and operating speed, current and future highway capacity and levels of service, current and predicted levels of highway safety, adopted state and local transportation plans and needs, the character of lands adjoining the highway, adopted local land use plans and zoning, the availability of existing and planned vehicular access from local streets and roads other than a state highway, and other reasonable alternate access provided by municipal streets and county roads. Category assignment boundaries shall be logical and identifiable. Category assignments shall maintain highway system hierarchy and facility continuity to the extent possible.

(i) Category reviews and reassignments. External requests for changes in the access category of a state highway or sections thereof must be submitted to the Department through the appropriate local authority and metropolitan planning organization where appropriate. Such requests must include information pertaining to the factors cited in this rule for determination of category assignment and explain the need for the requested change. The explanation must also discuss how the requested change is consistent with and conforms to the purpose and standards of this rule and does not compromise the public health, safety, and welfare. A reassignment in access category may not be approved solely to accommodate eventful or planned growth of an entity, a specific access request, or to allow the permitting of access connections that would otherwise not be approved.

(A) Local authority coordination. Upon request by local authorities, the Department shall coordinate with local authorities in the review of zoning, subdivision, and other land use regulations affecting the safety and operation of state highways to ensure that future access requirements related to local land use decisions are consistent with the purposes and standards of this rule. The issuance or approval of any permit, agreement, plat, subdivision, plan, or correspondence does not abrogate or limit the regulatory powers of the Department in the protection of the public's health, safety and welfare.

(ii) Access category inventory. The Department maintains an inventory of each section of state highway listing its access category assignment. This inventory is available from the appropriate Department Region and District office or the Department's website. Mapping inventory may not be held as the sole determination for access category assignment. Field assessment by a Department Permit Officer or designee may be needed to verify the appropriate access category assignment.

(iii) Category updates. The Department may review the access category inventory once every five years, or on an as needed basis, to accommodate requests or changes in the highway environment affecting the access requirements of the highway. For internally driven changes or updates, the initial assignment of access categories and any subsequent revision should be determined in cooperation and coordination with local authorities to ensure category assignments are compatible with preserving and maintaining the highway's intended and designed function within the state highway system and within

the context of the area's transportation needs and plans.

(3) Corridor agreements.

(a) General. The Department, in cooperation with local authorities, may draft agreements for the planned and future spacing or installation of access connections based on the assigned access category for the facility. The local authorities must consider these agreements in the local zoning ordinances and any development approvals. A corridor agreement in the form of a signal control plan or access corridor control plan may supersede an access category assignment. The following apply to all corridor agreements including signal control plans and access corridor control plans.

(i) The corridor agreement shall balance between state and local authority transportation planning objectives and preserve and support the current and future functional integrity of the highway.

(ii) The corridor agreement must be executed by the Department and the local authority to become effective. This approval shall be in the form of a written agreement signed by the local authority and the appropriate Department Region Director.

(iii) The corridor agreement shall be noted and reflected in the local jurisdiction transportation master plan.

(iv) Where a corridor agreement is in effect, all action taken in regard to the access must be in conformance with the agreement and current design standards except by written approval of the Department and local authority.

(b) Signal control plan. The Department may, at its discretion, initiate, direct or develop a signal control plan for a designated portion of a state highway. The following requirements apply for signal control plans in addition to those described for corridor agreements.

(i) A signal control plan must provide a comprehensive action plan for identification of signal locations along a designated portion of state highway. This plan shall, to the extent practical, meet the functional characteristics and design standards of the appropriate access category and requirements of the Department's Traffic and Safety division.

(ii) The signal control plan must indicate the location of existing and future signalized intersections. The plan must identify signal locations intended to be modified, relocated, realigned, removed, or added. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(c) Access corridor control plan. The Department or local authority may, at its discretion, initiate, direct or develop an access corridor control plan for a designated portion of a state highway. The following requirements apply to access corridor control plans in addition to those described for corridor agreements.

(i) An access corridor control plan must provide a comprehensive roadway access design plan for a designated portion of a state highway. This plan shall, to the extent feasible and given existing conditions, bring said portion of highway into conformance with its access category and its functional needs.

(ii) The access corridor control plan must indicate existing and future access locations and all access related roadway access design elements including signals to be modified, relocated, removed, or added, or to remain. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(iii) The access corridor control plan shall include current or future accommodation for multiple transportation modes, including vehicles, bicycles, pedestrians, and public transit.

(4) Limited-access and no-access lines.

(a) Application of limited-access control lines. Limited-access control for new classified principal arterial highways other than the interstate system and expressways shall be obtained in all rural areas and in areas of the highway being constructed on new alignment or if the existing highway is in sparsely developed areas where control is desirable and economically feasible.

(i) Short alignments. Limited-access control may be justified for limited lengths of high volume minor arterial highways, especially on new alignments and if adjacent to a freeway interchange.

(ii) Existing urban alignments. Limited-access control in urban areas on existing alignment shall not be allowed unless approved by the Department.

(b) Application of no-access control lines. Interstate and freeway facilities shall have no-access control lines.

(c) Designation of access control lines. Determination of the final location for limited-access and no-access lines, including final access locations, shall be made by the Department. The following requirements and limitations apply:

(i) FHWA review and concurrence for access locations is required for federal-aid roads based on the Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(ii) Approved access openings shall be accurately described in the property deed and shown on right-of-way maps and roadway construction plans as required to facilitate modifications to a limited-access or no-access control line.

(iii) After execution of the deeds, no change may be made in the access location, use, size or additional access openings be approved except as provided in this rule.

(iv) If a portion of a property which has no access to the highway is later sold, the Department has no obligation to grant an access to the property.

(5) Local authority highway projects.

(a) Compliance requirements. A public highway reconstruction project is not required to bring legal access into full compliance with current standards of this rule, except to the extent reasonable within the limitations and scope of the project, consistent design parameters, and available public funds.

(b) Maintenance responsibility. Vehicular use and operation of local roads where they connect to (access) a state highway is the responsibility of the local authority. The local authority shall maintain such state highway access locations in conformance with this rule to the extent feasible and within statutory and public funding limitations. The local authority may fund any necessary improvements by obtaining contributions from the primary users of the access or as off-site subdivision improvements necessary for the public safety.

(c) Consolidation and modification of access. Where multiple accesses service the same ownership, public highway reconstruction projects may combine or reduce the number of accesses or modify access size and design to meet current standards.

(d) Temporary access. Temporary access within a highway project construction zone may be permissible at the discretion of the Department. A temporary conditional access permit is required for any new temporary access location that provides access to the traveled portion of the highway.

(e) Interference with public highway construction. Under no circumstances shall the construction or reconstruction of a private driveway by a private interest interfere with the completion of a public highway construction project. The private interest must coordinate work with the Department project engineer for the project.

R930-6-7. Design Requirements.

(1) General.

(a) The design requirements presented herein are

intended to protect the functional integrity of state highways, maintain and preserve traffic mobility, provide efficient and necessary access, while protecting the public health, safety, and welfare. Designs for access connections to state highways must comply with Department standards and conform to the current MUTCD. A design based on engineering standards and methods that are more exact than those presented in this rule may be allowed if the design meets the purposes of this rule, does not violate standards of this rule, is based on desirable nationally accepted standards, and is determined acceptable to the Department. Local authority standards that are more stringent than those required by this rule may be used only if determined acceptable by the Department.

(2) General criteria for authorizing conditional access permit approval.

(a) General criteria. The Department may authorize modified or new access that is in compliance with this rule.

(b) Reasonable alternate access. When an application is created for access to a state highway with assigned access category 4 through 9, the access may be granted if reasonable alternate access cannot be obtained from the local street or road system. If the proposed access does not meet design or spacing standards, the access shall be denied if the proposed access on the property has reasonable alternate access available to the general street system and a variance request is not approved.

(i) Reasonable alternate access from a city or county road shall be determined in consultation with the appropriate local authority and the applicant. A determination of reasonable access from a local street or road shall include consideration of the local street or road function, purpose, capacity, operational and safety conditions and opportunities to improve the local street or road.

(ii) Where a subject property adjoins or has access to a lesser function road or an internal street system or by way of dedicated rights-of-way or easements, such access will be considered a reasonable alternate access and any access to the state highway will be considered an additional access.

(iii) Direct access to the state highway may be approved if the alternative local access will create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway will not create a safety issue or operational impairment to the highway.

(c) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(d) Signalized intersections. The Department shall give preference to public ways that meet or may be reasonably expected to meet signal warrants in the foreseeable future.

(e) Category 1. For highways and corresponding facilities with Category 1 designations, any new access or modification of existing access shall meet freeway/interstate design practices and Department and FHWA standards. They must also receive FHWA and Department approval when the Interstate Highway system is involved.

(i) All private direct access to Category 1 highways, access ramps, and structures is strictly prohibited unless specifically authorized for official temporary highway construction purposes under Department contract and must receive approval from FHWA and the Department when the Interstate Highway system is involved.

(ii) Public access to a Category 1 facility shall only be provided by means of interchanges properly spaced, located, and designed in accordance with Department and FHWA standards and regulations.

(iii) Any new access or modification of existing access to Category 1 facilities shall separate all opposing traffic movements by physical constraints such as grade separations and non-traversable median separators.

(iv) A new interchange or, in the determination of the Department, a significant modification to an interchange on a Category 1 facility that is part of the Interstate Highway system requires the preparation of analyses and reports that meet current FHWA and Department requirements.

(f) Category 2 and 3. For highways with Category 2 or 3 designations, access may be allowed by means of interchanges or public street intersections. Public street access to Category 3 highways shall be signalized.

(i) The Department may allow modifications to an existing private point of access abutting a Category 2 or 3 highway including relocation of the point of access within the limits of the property, if such modification or change will benefit the operation and safety of the highway, bring the access level of the highway into greater conformance with the access category, or be in the interest of public health, safety, and welfare.

(ii) Any direct private access approved for Category 2 or 3 highways shall be for right turns only and shall be closed when reasonable alternate access is available or based on additional criteria defined by the Department in the conditional access permit.

(g) Category 4 through 9. For highways with Category 4 through 9 designations, direct access may be approved if the alternative local access would create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway does not create an operational or safety problem for the state highway.

(h) Category 10. For highways with Category 10 designations, direct access shall be provided only by means of public street intersections.

(i) All private direct access to Category 10 highways is strictly prohibited unless specifically authorized for official temporary highway construction or utility maintenance and operations purposes under Department contract.

(ii) Spacing between ramps and adjacent intersections shall accommodate weaving movements and storage requirements to ensure smooth and safe operations for the frontage road.

(iii) No access shall be allowed between an exit ramp and its downstream cross-street intersection or between an entrance ramp and its upstream cross-street intersection.

(iv) No access shall be approved within 100 feet of the intersection of freeway ramp and one-way frontage road.

(3) Access placement requirements.

(a) Spacing requirements. Table 1 summarizes the minimum required signal spacing, street spacing, driveway spacing, and interchange crossroad access spacing for corresponding state highway access categories.

TABLE 1
State Highway Access Management Spacing Standards

Category	Minimum Signal Spacing (feet)	Minimum Street Spacing (feet)	Minimum Driveway Spacing (feet)	Minimum Crossroad Access Spacing to 1st Right-in Right-out Driveway (feet)	Interchange to to 1st Inter-section (feet)	Spacing from last Right-in Right-out Driveway (feet)
1 (I)	N/A	N/A	N/A	n-a	n-a	n-a
2 (S-R)	5,280	1,000	1,000	1,320	1,320	1,320
3 (S-U)	2,640	N/A	N/A	1,320	1,320	1,320
4 (R-S)	2,640	660	500	660	1,320	500
5 (R-PU)	2,640	660	350	660	1,320	500
6 (R-U)	1,320	350	200	500	1,320	500
7 (C-R)	1,320	300	150	n-a	n-a	n-a
8 (C-U)	1,320	300	150	n-a	n-a	n-a
9 (O)	1,320	300	150	n-a	n-a	n-a
10 (F-FR)	1,320	660	N/A	n-a	n-a	n-a

"N/A" means not allowed

"n-a" means not applicable

(i) Signal spacing. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Signals that are closely or irregularly spaced bring about increases in crashes, stops, delay, fuel consumption, and vehicle emissions. Long and uniform signal spacing allows for more efficient progression through a corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows. Signal spacing shall be as defined in this rule or as deemed necessary by the Department for the safe operation, capacity, signal progression, and proper design of the signal and adjacent accesses. Preference for the spacing, timing, and operation of a signal shall be given to highways and cross streets of a higher access category or function.

(ii) Street and driveway spacing. Access connections, including streets and driveways introduce conflicts and friction into the traffic stream of the main highway. Vehicles entering and leaving the main highway often slow the through traffic. The speed differentials between turning and through vehicles increase the potential for crashes. Increasing the distance between intersections and driveways enhances traffic flow and safety by reducing the frequency of conflicts for the main highway and providing greater distances to anticipate and recover from turning maneuvers. Where feasible or required by this rule, accesses must be combined or closed to reduce frequency and increase spacing between accesses. The spacing must also be consistent with current signal progression efficiency and cause no degradation to existing operations.

(iii) Interchange crossroad access spacing. Freeway and expressway interchanges allow traffic to transition from freeways to arterial or other lower functioning roadways. Interchanges also serve as important focal points of roadside development in urban, suburban, and rural areas. Intersections that are too close to the arterial/freeway interchange ramp termini result in heavy weaving volumes, complex signal operations, frequent accidents, and recurring congestion. Access connections to interchange crossroads shall be sufficiently spaced to allow the smooth transition between the freeway or expressway and intersecting lower functioning roadways. The Department may require applicants to conduct a weaving or speed change lane analysis given unique area conditions. The Department may require applicants to use a distance greater than defined in this rule when said analysis shows that a greater spacing is necessary to provide safe and efficient weaving maneuvers.

(A) The following elements must be considered in determining minimum interchange crossroad access spacing distances:

(I) The distance required to weave across the through travel lanes.

(II) The distance required for transition into left-turn lane(s).

(III) The distance needed to store left turns with a low likelihood of failure.

(IV) The distance from the stop line to the centerline of the intersecting road or driveway.

(B) The minimum interchange to crossroad spacing requirements of Table 1 are based on the following definitions:

(I) "To 1st right-in right-out driveway," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first right-in right-out driveway intersection.

(II) "To 1st intersection," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first major intersection.

(III) "From last right-in right-out driveway," means the distance from the last right-in right-out driveway intersection to the interchange on-ramp gore area (point of widening on the crossroad).

(b) Emergency access. Emergency access may be approved on state highways with category 2 through 10 designations, where required by local safety regulations, or where the Department has determined exigent circumstances exist. Such direct emergency access may be approved only if it is not feasible to provide the emergency access to a secondary roadway. External requests for emergency access must include a written explanation with references to local standards from the local authority safety official. Emergency access may not be authorized to accommodate general vehicular ingress or egress. The access shall be gated and locked.

(c) Agricultural access. Agricultural access may be approved on state highways with access to category 2 through 9 designations and where, in the determination of the Department, the property has no other reasonable alternate access. Additional agricultural access to property under the same ownership or controlling interest may be approved if the necessity for such additional access due to topography or ongoing agricultural activities is demonstrated. Agricultural accesses must be kept to the minimum necessary to provide access service. Agricultural access must meet minimum access design and safety standards of this rule. A change in use of the parcel of land serviced by the agricultural access may require that the access be closed. The spacing criteria between accesses contained in this rule may be waived for agricultural access. All such agricultural accesses must meet the sight distance criteria of this rule.

(d) Access near at-grade railroad crossings. Conditional Access Permits within 250 feet of an at-grade railroad crossing are prohibited unless approved by the Department. Circumstances may exist where greater spacing is required consistent with the appropriate access category spacing. See Utah Administrative Code R930-5 for more information on the process to follow to comply with Department spacing requirements.

(e) Shared access. Shared access of two or more parcels may be required where a proposed new access or the redesign of an existing access does not meet spacing standards and criteria for the appropriate access category. The access location shall serve as many properties and interests as possible to reduce the need for additional direct access to the state highway.

(f) Offset placement. Where proposed or redesigned access connections which are offset and not separated by a non-traversable median are to be considered, every effort must be made to align opposing driveways and streets.

(g) Challenging topography. Where existing topography or other existing conditions make the required access spacing intervals not feasible, the Department may consider topography, established property ownerships, unique physical limitations, unavoidable or pre-existing historical land use patterns, and physical design constraints with a reasonable attempt to achieve the required access spacing. Where there are conflicts within this rule, the more stringent requirement must be met.

(4) Access design requirements.

(a) Sight distance. Access points must be located and designed to provide adequate sight distance along the state highway and the access.

(i) Access design must meet AASHTO sight distance guidelines and Department standards.

(ii) Potentially obstructing objects, including but not limited to, advertising signs, structures, trees, and bushes must be designed, placed, and maintained to meet sight distance requirements for vehicles using the access.

(iii) Modifications to the existing highway may be

required for access points with less than the required minimum sight distance. Modifications may include, but are not limited to, changes to horizontal or vertical alignments, addition of acceleration or deceleration lanes, roadway relocation, use or creation of other general street system facilities, or other modifications as required by the Department.

(b) Access width. Access width shall be designed and constructed to properly accommodate the anticipated traffic volumes, lane geometries, and vehicle characteristics of both the access and the adjoining highway.

(i) Minimum and maximum access widths (feet):

(A) Commercial or industrial land uses:

(I) Two-way direction use: 25 feet minimum to 50 feet maximum.

(II) One-way direction use: 16 feet minimum to 30 feet maximum.

(B) Residential land uses:

(I) Two-way or one-way direction use: 16 feet minimum to 30 feet maximum.

(C) Agricultural uses:

(I) Two-way or one-way direction Use: 16 feet minimum to 32 feet maximum.

(ii) One-way approaches. The Department may treat adjacent one-way approaches (one-way in, one-way out) as one access when all of the following conditions are met:

(A) The one-way approaches are divided by a non-traversable median at least four feet wide but no more than 25 feet.

(B) Signing for the access median is clear and visible.

(iii) Future public streets. Applications for an access point intended to become a future public street access must consider long-term traffic projections, modal use, and agency standards to determine appropriate access widths.

(iv) Private openings for limited-access highways. The maximum size of private access openings shall be 16 feet for residences, 32 feet for farms or other areas where large equipment is used, and 50 feet for commercial and industrial areas.

(c) Access radii. The turning radii of an access must accommodate the turning radius of the largest vehicle using the access on a regular basis.

(i) Minimum and maximum radii ranges:

(A) Commercial, industrial, or agricultural land uses:

(I) Urban areas: 30 feet minimum to 60 feet maximum.

(II) Rural areas: 20 feet minimum to 60 feet maximum.

(B) Residential land uses:

(I) Urban areas: 10 feet minimum to 15 feet maximum.

(II) Rural areas: 20 feet minimum to 30 feet maximum.

(ii) Where possible, applicants shall reduce the access radii to improve visual and physical separation of accesses and to reduce pedestrian conflicts by reducing the total access width at the roadway edge (i.e., at the intersection). Access radii shall be no larger than required to accommodate the volume and type of vehicles using the access on a regular basis.

(iii) Curb cut style driveways are typically required where curbs are present. However, radius curb returns may be used when determined by the Department to be necessary and consistent with existing or planned conditions.

(iv) Access points intended to become a future public street access may use the design criteria of the local authority and the Department to select appropriate radii, corner and intersection design. Access designs are subject to approval by the Department.

(d) Driveway profile. Driveways must be designed to minimize slope changes to prevent dragging and must conform to Department standards, including UDOT standard drawings.

(e) Driveway vertical curves. Driveway vertical curves must be as flat as feasible and at least 20 feet long. To prevent dragging, the following driveway vertical curve designs are prohibited:

(i) A hump or dip greater than 6 inches within a wheelbase of 10 feet.

(ii) Crest vertical curves exceeding a 3-inch hump in a 10-foot chord.

(iii) Sag vertical curves exceeding a 2-inch depression in a 10-foot chord.

(iv) Rolled gutters crossed by traffic.

(f) Driveway angle. Driveway angles less than 80 degrees are prohibited. Whenever possible, driveways must provide a right (90-degree) driveway angle.

(i) Exceptions. For one-directional use driveways with a right-turn entry-only or a right-turn exit-only operation, driveway angles may not be less than 60 degrees. Whenever possible, these one-directional driveways must provide a right (90-degree) driveway angle.

(g) Access signing. Traffic control devices for accesses that serve the general public must conform to the current MUTCD. Stop or yield signs are required for all street intersections and driveways when warranted by traffic conditions.

(h) Emergency access. Emergency access features must be designed to accommodate emergency vehicle characteristics appropriate for the development or intended land use and in conformance with the Department driveway standards, including those defined in this rule. However, emergency access widths may be designed to serve one-way traffic and may be less than 16 feet wide.

(i) Emergency access surfacing must minimize its visibility while still providing sufficient strength.

(ii) Emergency access must be designed based on the standards of the local emergency services and accommodate emergency vehicles necessary to serve the site.

(iii) Emergency access must provide a suitable barrier to eliminate non-emergency use. The access must be signed for emergency services only and shall only be opened during emergencies.

(iv) The access, including but not limited to barriers and signing, shall be maintained by the permittee.

(v) Emergency access barriers shall not be placed within the state highway right-of-way.

(i) Other design elements. The Department may require other design elements or features to ensure accesses are designed and constructed in a manner that will encourage proper operations and safety. Additional design elements and features include, but are not limited to, the following:

(i) Positive barrier. The Department may require access with turn restrictions to provide positive barrier such as a non-traversable median to prevent unauthorized turns. Intersection or driveway islands that channel traffic movements may be required for turn-restricted movements when any of the following apply.

(A) No restrictive center median is in place or programmed to be constructed.

(B) When frequent violations of the turn restrictions are anticipated.

(ii) Parking and site circulation. Accesses must be designed to facilitate turning movements to and from the highway while preventing vehicle queues on the highway.

(A) Parking or storing vehicles within the state highway right-of-way is prohibited without the prior written consent of the Department. See UDOT Policy 06C-09 - Placement of Angle Parking on State Highways for more information. Roadside businesses must provide sufficient private parking or storage space to handle their corresponding

parking needs and not rely upon any parking space within the state highway right-of-way.

(B) Access may be denied for parking areas that require backing maneuvers onto the state highway, roadway or, right-of-way. Circulation for parking facilities must be arranged to restrict backing onto the state highway and allow vehicles to enter and exit the site in forward drive. This requirement does not apply to residential single unit driveways.

(C) Accesses that have or are planned to have a gate across it, must be designed so the longest vehicle using the access can clear the highway when the gate is closed. For locations with prohibitive topographical features, applicants must provide a wide shoulder for temporary standing while the gate is operated.

(D) The Department may require the review of the parking lot and circulation layout and require designs, terms, and conditions necessary to ensure the safe use of the access.

(iii) Modal considerations. Access designs must provide for the safe and convenient movement of all highway right-of-way users and modes of transportation including but not limited to pedestrians, bicyclists, transit, and the physically challenged. Sidewalks and bike lanes or paths may be required where deemed appropriate by the Department or when required by the local authority.

(iv) Storm drainage. All new or modified accesses must make provisions for site retention, detention, or accommodation of site originating surface runoff such that no flow of stormwater or spill shall utilize the state highway drainage system unless by prior analysis and agreement in conformity with UDOT Policy 08A-06.

(A) Applicants must construct all driveways and buffer areas to maintain a positive drainage system within the highway right-of-way and not alter the stability of the roadway sub-grade.

(B) The Department is not liable for the quality of drainage waters originating at service stations or special industrial processing plants that are directed into irrigation canals through highway drainage system. Such drainage concerns are the subject of separate agreements and permits by the developers and irrigation companies.

(v) Roadside development lighting equipment. All lighting equipment for the roadside development must be placed outside the highway right-of-way. Directing light beams toward the eyes of approaching drivers on the highway is prohibited.

(5) State highway design requirements.

(a) General. This section describes the Department requirements for highway features located within the rights-of-way of any state highway. Highway features include, but are not limited to, traffic signs and street name signs, traffic signals, traffic control equipment, highway lighting, crosswalks, curb and gutter, sidewalks, and pavements. Installation of new features within the highway right-of-way and modifications to existing highway features necessary as part of permitted work must be completed at the expense of the permittee and in accordance with plans approved by the Department. Any damage to existing highway features must be repaired or restored at the expense of the permittee and in accordance with plans approved by the Department. Any work completed within state highway right-of-way must comply with Department standards and conform to the current MUTCD.

(i) Site specific requirements. For specific sections of state highway, the Department may provide additional requirement details for access design and construction, including but not limited to, pavement thickness and specifications, curb design and specifications, roadway fill design and compaction, testing and inspection, and other specific details.

(ii) Posted speed. A proposal for access may not presume a lower posted speed limit than currently posted or request a lower speed limit in order to accommodate the access.

(b) Traffic signals. The installation of permanent traffic control devices, including but not limited to traffic signals is regulated by the MUTCD and Department guidelines and standards.

(i) Nothing in this rule is intended to require the Department to authorize a traffic signal or other permanent traffic control device.

(ii) The Department may, at its discretion, complete the installation of permanent traffic control devices. The permittee shall pay for direct costs and labor provided by the Department for the installation and relocation of all traffic control devices within public right-of-way which are directly related to the use or construction of the proved access.

(iii) Signal location, timing, and operation are not intended to serve or benefit single use or private access connections. Preference to signal location, timing and operation shall be given to highways and cross streets of a higher access category or function.

(iv) New traffic signals and modifications to existing traffic signals shall be allowed only as approved by the Department. No traffic signal may be authorized without the completion of an analysis that is sealed (stamped) by a Professional Engineer licensed in the State of Utah and meets MUTCD signal warrants and all requirements of the Department. The traffic signal analysis must consider traffic signal system operation, design, construction feasibility, and safety.

(v) For existing or proposed accesses that meet MUTCD warrants and the Department requirements for signalization, but do not meet the spacing or placement requirements of this rule, the access shall be reconstructed to conform to appropriate design criteria and eliminate or reduce the traffic movements that caused the traffic signal warrant to be met.

(vi) Where the access may warrant signalization in the future, phasing of the installation may be required.

(vii) The Department may, at its discretion in consideration of approving access, require design, and operational modifications, restrict one or more turning movements, or deny access.

(viii) Category 2 and 3. For state highways with Category 2 or 3 designations, signals at intersections with major cross streets or roads of equal importance may be programmed to optimize traffic on both streets equally. Cross-streets of lesser importance need not be optimized equally. Traffic signals must be programmed to allow a desirable highway bandwidth of at least 50 percent. The efficiency of the signal system must be analyzed utilizing traffic volume, capacity, and level of service calculations. The analysis must determine the optimum progression speed under both existing and proposed conditions.

(ix) Category 4, 5 and 6. For state highways with Category 4, 5, or 6 designations, where it is not feasible to meet one-half mile spacing and where signal progression analysis indicates good progression (40 percent efficiency or better), or does not degrade the existing signal progression, a full movement intersection may be allowed. In such cases, a variance and subsequent traffic study is required. Spacing to nearby intersections must be sufficient to accommodate the future vehicle storage queues for both turning and through movements. The access location must also meet other access spacing, design, and need requirements of this rule.

(c) Surface. The permittee must appropriately surface driveways and connections between the traveled way and the service area. For accesses adjoining paved highways, the permittee must pave the access surface to the right-of-way line. Pavement materials used within the state highway right-of-way shall meet Department standards and requirements.

(i) Preservation of new pavement. The Department may not issue permits to cut or excavate on newly constructed,

paved, or overlaid state highways. This preservation restriction applies for a period of two years after installation of pavement or overlay. Exceptions to preservation of new pavement restrictions shall be made only in cases of emergency, and only with the approval of the appropriate Department Region Director or designee.

(d) Median treatments. A raised median or movement channelization may be required.

(i) Nothing in this rule is intended to require the Department to authorize a left turn movement at any location.

(ii) Left turn movements may not be approved if a median is already established and the proposed opening of the median does not provide, in the determination of the Department, any significant operational or safety benefits to the general public or will be counter to the purpose of the median construction and the continued function of the highway at the category assigned to it.

(iii) A median opening may not be allowed if any of the following apply:

(A) A safety or hazard situation is likely or identified.

(B) The location is within the functional area of an existing or planned interchange, signalized intersection, or major unsignalized intersection.

(iv) Category 2 and 3. For state highways with Category 2 or 3 designations, Left turn movement may be approved if all of the following apply:

(A) Access does not have potential for signalization.

(B) Travel is circuitous in one direction that exceeds two miles.

(C) Left turn movement can be designed to the Department's satisfaction that meets all safety, design, and operational standards.

(v) Category 4, 5, 6, 7 and 8. The following apply for state highways with Category 4, 5, 6, 7 or 8 designations:

(A) If a restrictive median exists, left turns at unsignalized intersections shall be restricted unless the restriction of these movements will cause a safety or operations problem or cause an out-of-direction movement of greater than one mile (or one-half mile for state highways with Category 6, 7, or 8 designations).

(B) If a flush or traversable median exists, left turns may be approved unless an operational or safety problem is identified.

(e) Auxiliary lanes. Auxiliary lanes for state highways must conform to Department Standards, including UDOT standard drawings.

(i) Auxiliary lanes may be required where any of the following apply:

(A) An auxiliary lane has been specifically identified and documented necessary to prevent or correct an operational or safety condition that will be associated with traffic imposed by the creation of a new access or an existing access.

(B) Any of the following apply for an access to an access category 2 or 3 highway:

(I) A left turn lane with deceleration, storage, and taper lengths is required for any access with a projected peak hour left turn ingress turning volume greater than 5 vehicles per hour.

(II) A right turn lane with deceleration and taper lengths is required for any access with a projected peak hour right turn ingress turning volume greater than 10 vehicles per hour.

(III) A right turn lane with acceleration and taper lengths is required for any access with a projected peak hour right turning volume greater than 10 vehicles per hour.

(IV) A left turn acceleration lane may be required if such a design will be a benefit to the safety and operation of the roadway.

(V) Left turn acceleration lanes are generally not required where the posted speed is less than 50 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(C) The following applies for an access to an access category 3 highway:

(I) Left turn acceleration lanes are generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(D) The following apply for an access to an access category 4 or 5 highway:

(I) A left turn deceleration lane with taper and storage length is required for any access with a projected peak hour left ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the required deceleration length.

(II) A right turn deceleration lane and taper length is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the required deceleration length.

(III) A right turn acceleration lane and taper length is required for any access with a projected peak hour right turning volume greater than 50 vehicles per hour when the posted speed on the highway is greater than 40 mph. The taper length must be included in the required acceleration length. A right turn acceleration lane may also be required at a signalized intersection if a free-right turn is needed to maintain an appropriate level of service for the intersection.

(IV) Right turn deceleration and acceleration lanes are generally not required on roadways with three or more travel lanes in the direction of the right turn.

(V) A left turn acceleration lane may be required if it will be a benefit to the safety and operation of the roadway.

(VI) A left turn acceleration lane is generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(E) Any of the following apply for an access to an access category 6, 7, 8, or 9 highway.

(I) A left turn lane with storage length plus taper is required for any access with a projected peak hour left ingress turning volume greater than 25 vehicles per hour. If the posted speed is greater than 40 mph, a deceleration lane and taper is required for any access with a projected peak hour left ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the deceleration length.

(II) A right turn lane with storage length plus taper is required for any access with a projected peak hour right ingress turning volume greater than 50 vehicles per hour. If the posted speed is greater than 40 mph, a right turn deceleration lane and taper is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the deceleration length.

(F) The following apply for an access to an access category 10 highway:

(I) Exclusive turning lanes are required for all intersections. At a minimum all street accesses must provide an exclusive right turn lane with a minimum length of 250 feet, exclusive of tapers. Longer storage lengths may be necessary based on traffic analysis. Left turn lane dimensions to be defined through traffic analysis. Taper and deceleration lengths to meet current Department standards for posted speeds.

(ii) For specifically identified and documented safety and operational reasons, a turn acceleration or deceleration lane may also be required based on any of the following location factors:

(A) Volume of commercial trucks.
(B) Influence of nearby access.
(C) Highway speed and traffic density access volume.
(D) Existing highway auxiliary lanes close to the access.
(E) Nearby traffic control devices.
(F) Available stopping sight distance.
(G) Topographic and highway design factors.
(iii) For access locations with high percentage of truck use, the Department may require corresponding auxiliary lanes be built to full length and width and the transition taper length extend beyond the full length.

R930-6-8. Conditional Access Permit Application Procedures and Requirements.

(1) General.
(a) Current standards. Applicant must use the most recent editions of engineering and state standards and best practices, including but not limited to those cited in this rule.
(b) Compliance responsibility. It is the responsibility of the applicant to demonstrate the application meets the requirements of this rule. Requirements for a conditional access permit refer to the applicant's responsibility to obtain approval from the Department before being authorized to access to a state highway.
(c) Approvals and environmental compliance. Applicants must comply with all federal, state, and local authority approvals and laws, including environmental laws before the Department can issue a permit.
(d) Site plan. A site plan approval by a local authority does not entitle the applicant to access a state highway. A conditional access permit from the Department does not imply endorsement or approval of the submitted site plan.
(e) Multiple accesses. A conditional access permit application may cover multiple access connections serving a site.
(f) Review periods. Failure of the Department to comply with the review periods defined in this rule shall not preclude the Department from approving or denying any application.
(g) Encroachment permit. Conditional access permit approval does not allow the applicant to construct the access. An encroachment permit must also be obtained prior to any construction in the state highway right-of-way.
(h) Movement restrictions. A conditional access permit does not guarantee a right of full movement access. The Department may, at its own discretion, require access movements to be restricted.
(2) Conditions requiring conditional access permit.
(a) Access changes. A conditional access permit is required whenever a new driveway, other curb cut, or local street connection is sought on a state highway. This applies to proposals to construct a new vehicular access, modify or relocate an existing access, or to close an access on the state highway right-of-way.
(b) Change in land use type and intensity. A conditional access permit is required when there is a change in land use or a change in the land use intensity of an existing access.
(i) Change of land use. A change in land use includes any land use change that requires a change in zoning, site plan, or conditional use approval by the local authority.
(ii) Change of intensity of land use. A change of intensity of land use is considered to have occurred when an existing land use intensifies as described below. The applicant must use current ITE Trip Generation procedures or other Department accepted methodology to identify this change. A level of change requiring a conditional access permit is a trip generation that exceeds 100 peak hour trips or 500 daily trips or a change in trip generation of 20% or greater relative to existing conditions. If the property, other than a single-family residential dwelling, is vacant for more than twelve months, the trip generation for that property is considered zero. A conditional access permit is also required if trip generation change causes a change in the Access Application Level.
(c) Modification or improvement by local authorities. A conditional access permit is required for new or modified public access to the state highway (such as county roads and municipal streets).
(i) Access to subdivisions and other developments must be processed in the same manner as a private access and applied for pursuant to this rule, until the access is constructed, completed, and accepted as a public access and public way by the local authority.
(ii) The local authority shall be considered the applicant for requests submitted by local authorities for a new or modified public access. A private developer may not apply for a private driveway with the local jurisdiction as the applicant.
(iii) Where a private development accessing the roadway of a local authority necessitates access improvements and where the private access shall become and operate as a local roadway connecting to a state highway, the applicant may either be the local jurisdiction, the developer, or a combination, at the discretion of the local authority. The corresponding application must identify the intended connection on the local jurisdiction transportation master plan
(d) Transfer of Additional Right-of-Way and Improvements. The increased intensity of traffic associated with a proposed access may require the transferring of new state highway real property and highway improvements to handle the traffic associated with the proposed development. The Department may require the applicant to transfer real property, improvements and highway appurtenances when an essential link exists between a legitimate governmental interest and the transfer of the mitigation requirements and the mitigation requirements are roughly proportionate to the impact of the proposed development. In some instances where the transfer of real property is not feasible, the Department may require the applicant to pay for the mitigation of the development impacts to the highway. Additional right-of-way necessary for the state highway improvements, including but not limited to, travel lanes, turn lanes, and auxiliary lanes, are to be conveyed without cost to the Department by dedication or by a warranty deed in a form acceptable to the Department. The Department may accept a perpetual easement for facilities or improvements located outside of the highway right-of-way. If the applicant transfers the property by warranty deed, all rights, title and interests are conveyed to the Department. The applicant shall provide a title policy for the real property to be transferred to the Department. The title policy shall only contain exceptions approved by the Department. If the property is being dedicated through a plat, the property shall not have any encumbrances that are not approved by the Department. The Department may refuse to accept the transfer of real property if the property has unacceptable encumbrances, contains hazardous substances or other conditions of the property. The real property must be in compliance with all applicable state and federal statutes, regulations and rules.
(e) Temporary conditional access permit. A temporary conditional access permit is required for any temporary driveway or connection to a state highway. A temporary driveway or connection may be approved to accommodate actions associated with site construction or development. The term of the temporary conditional access permit shall be noted on the permit but shall not exceed 12 months in duration.
(3) Pre-application coordination.

(a) Department primary contact. The Region permits officer or other designated employee of the Department shall be the primary contact for the applicant. Direct inquiries regarding an application or review must be directed to this person.

(b) Local agency coordination. To apply for a conditional access permit, it is recommended that applicants work closely with the local authority's land use approval division and the appropriate Department Region permitting office.

(c) Pre-application meeting. Prior to submitting an application, the applicant must contact the appropriate Department Region permitting office to schedule a pre-application meeting. A pre-application meeting provides Department personnel and local authorities an early opportunity to examine the feasibility of the access proposal with the applicant and to consider whether it is permissible under the Department's standards, the requirements of this rule and requirements of locally adopted access plans. During the pre-application meeting, the Department will identify and determine the access category, access application level, and any traffic impact study requirements. The Department will also identify and determine whether or not a limited-access or no-access control line is affected, whether or not a land value appraisal is required, and other application requirements. The applicant shall clearly identify all neighboring and adjoining parcels where shared ownership interests exist. An application may be submitted any time after the pre-application meeting when all required application components are fully designed, complete, and available to electronically upload into the Department's online permit system. The Department shall review any documents that require recording prior to the document being submitted for recording.

(i) Meeting is not binding. The pre-application meeting is not binding to the Department or the applicant. Information presented and findings generated during the pre-application meeting may be documented and confirmed in a written notification. However, any pre-application written notification or communication from the Department shall not be considered binding.

(ii) Number of meetings. For typical access applications, one pre-application meeting shall be provided in regards to a specific access application. A second pre-application meeting may be allowed at the Department's discretion to address complex access situations, or to include other affected jurisdictional partners.

(4) General application requirements.

(a) The applicant shall complete the conditional access permit application using the form provided by the Department.

(b) The applicant shall complete any other form, or produce any other document, deemed required by the Department, or this rule, to facilitate the timely review of the application.

(i) The Applicant must identify any Limited-Access and No-Access lines adjoining the property. The Department makes final determination whether an established line of Limited-Access or No-Access exist in the area in which access is sought.

(c) When all of the required documents are assembled and complete, but prior to being recorded or finalized, the applicant shall upload the documents into the Department's online permit system to initiate the formal completeness review and application review process.

(d) When the Department deems the application complete, and prior to starting the application review process, the applicant will receive an automated email from the online permit system with instructions on how to electronically pay the appropriate non-refundable permit review fee. Once this permit fee is paid the Department will initiate the application review process which will result in the permitting outcome (e.g., approval or denial).

(e) Access application level. The level of application required is based on the size and magnitude of the project being proposed by the applicant. The application levels define specific threshold elements related to required applicant site plan elements, permitting process, permitting schedule, application fees, traffic impact study requirements, and other permit related issues. The applicant must declare all property within the application area to which they hold interest, including, but not limited to, property to be developed. The application levels are based on anticipated changes to state highway facilities and site-generated traffic volumes for daily and/or peak hour time periods. Higher application levels are required when the construction of the proposed access would require significant modifications to elements of a state highway. The Department reserves the right to determine at its own discretion which modifications are considered minor or significant. Generally, the Department will consider modifications to traffic signals, pedestrian ramps, and sidewalks to be minor modifications. For convenience, application level thresholds are also presented in terms of standalone land use intensity. Land use intensities are based on published ITE Trip Generation rates. The Department may require the applicant to provide more precise trip generation estimates to determine the appropriate access application level for mixed land use or complex developments.

(i) Application level I thresholds. Applicant shall meet the requirements of application level I if the projected site generated traffic is less than 100 daily vehicle trips and there are no proposed modifications to traffic signals or elements of the roadway. Standalone land use intensities corresponding to application level I site generated traffic thresholds include the following:

(A) Single Family: < 10 units.
(B) Apartment: < 15 units.
(C) Lodging: < 11 occupied rooms.
(D) General Office: < 9,000 square feet.
(E) Retail: < 2,500 square feet.

(ii) Application level II thresholds. Applicant shall meet the requirements of application level II if the projected site generated traffic between 100 and 3,000 ADT or less than 500 peak hour vehicle trips and there are minor modifications to traffic signals or elements of the roadway. Standalone land use intensities corresponding to application level II site generated traffic thresholds include the following:

(A) Single Family: 10 to 315 units.
(B) Apartment: 15 to 450 units.
(C) Lodging: 11 to 330 occupied rooms.
(D) General Office: 9,000 to 270,000 square feet.
(E) Retail: 2,500 to 70,000 square feet.
(F) Gas Station: < 18 fueling positions.
(G) Fast Food: < 6, 000 square feet.
(H) Restaurant: < 26,000 square feet.

(iii) Application level III thresholds. Applicant shall meet the requirements of application level III if the projected site generated traffic between 3,000 and 10,000 ADT or between 500 to 1,200 peak hour vehicle trips or there is a proposed installation or, in the determination of the Department, significant modification of one or more traffic signals or elements of the roadway, regardless of project size. Standalone land use intensities corresponding to application level III site generated traffic thresholds include the following:

(A) Single Family: 316 to 1,000 units.
(B) Apartment: 451 to 1,500 units.
(C) Lodging: 331 to 1,100 occupied rooms.
(D) General Office: 270,001 to 900,000square feet.
(E) Retail: 70,001 to 230,000 square feet.
(F) Fast Food: 6,000 to 20, 000 square feet.

(iv) Application level IV thresholds. Applicant shall meet the requirements of application level IV if the projected site generated traffic greater than 10,000 ADT or there is a proposed installation or, in the determination of the Department, significant modification of two or more traffic signals, addition of travel lanes to the state highway or proposed modification of freeway interchange, regardless of project size. Standalone land use intensities corresponding to application level IV site generated traffic thresholds include the following:

(A) Single Family: > 1,000 units.

(B) Apartment: > 1,500 units.

(C) Lodging: > 1,100 occupied rooms.

(D) General Office: > 900,000square feet.

(E) Retail: > 230,000 square feet.

(f) Reasonable alternate access. The applicant shall identify any and all reasonable alternate access for the subject site.

(i) Determination of reasonable access. Reasonable local access shall be determined by the Department.

(ii) Limited-access and no-access control lines. When applications are made for properties adjoining a state highway with a limited-access or no-access control line, reasonable alternate access shall be afforded through the use of other existing or planned facilities whenever possible.

(g) Traffic impact study (TIS) purpose. The purpose of the TIS is to identify system and immediate area impacts associated with the proposed access connection(s). A traffic study may be required to identify, review, and make recommendations for mitigation of the potential impacts a development may have on the roadway system.

(i) Applicant responsibility. The applicant is responsible for the submittal of an acceptable TIS as determined by the Department. The TIS, when required, shall be completed by an individual or entity demonstrating capability to analyze and report mobility, traffic engineering elements, and design elements as necessary for the application study area and site design. Additionally, the TIS shall be stamped by a professional engineer licensed in the State of Utah.

(ii) TIS Requirements and Waiver Evaluations. A TIS may be required for any conditional access permit or for any encroachment permit. The Department, at its discretion, determines when a TIS is required. The Department will notify the applicant whether or not a TIS is required during the pre-application meeting. In general, the TIS requirements may be waived with the written concurrence of a Region Traffic Engineer, or designee, for Access Application Levels I and II. Access Application Levels III and IV may be waived with the written concurrence of the Traffic Operations Engineer, or their designee, only when the applicant is voluntarily constructing all mitigation measures recommended by the Department. If such mitigation measures are not easily identifiable, or if the potential traffic impacts associated with a proposed access point modification are unknown (or considered high-risk) the TIS shall not be waived for any Access Application Level. Additionally, a TIS is required for modifications to existing state highway traffic control equipment and shall not be waived.

(ii) Applicant justification. Applicants wishing to waive the requirement for TIS Levels III and IV must submit a written request, including justification for waiving the requirement for a TIS.

(iii) Department documentation requirement. Any TIS waiver the Department authorizes shall be documented in writing and become part of the official permit record within the Department's online permit system. This record shall contain the individual's name that is authorizing the waiver, the date the waiver was authorized, and justification for approving the waiver.

(iv) TIS details, format, and study area boundary. The Department shall provide the applicant basic instructions regarding the details, format, and study area boundary for the TIS during the pre-application meeting.

(5) Application submittal.

(a) Application and attachments. Applicants must submit to the appropriate Department Region permitting office, the complete application including any required attachments reasonably necessary to review and assess the application and complete the application review process. Required attachments may include detailed site plans, maps, traffic studies, surveys, deeds, agreements, access value appraisals, documents, and other data to demonstrate compliance with this rule. Maps and site plans to be submitted may include, but are not limited to utilities in the vicinity of the access and utilities to be moved. The Department shall determine the scope of the attachments necessary for application submission based on the identified access application level.

(b) Site or development overview. Applications must provide a description of the site/development including site plan and overview materials such as preliminary maps, plans, and documents to illustrate the site, the size and type of proposed land use, estimated traffic volumes, vehicle types generated by the site, adjacent public roads and highways, adjacent properties, and any existing or available access points. The application must include all the information and materials requested at the pre-application meeting. Plans may be required to be stamped by a professional engineer licensed in the State of Utah.

(c) Document ownership. All submitted applications become records of the Department. The Department may not request items without relevance to the approval or denial of the application. If the applicant is other than the fee surface rights owner of the property to be served, the applicant shall include sufficient evidence of concurrence or knowledge in the application by the fee owner and proof of development rights (i.e. option to buy, federal use permit). The applicant shall give complete names, physical address, email address, and telephone numbers of the property owner(s), the applicant(s), and primary contact person, on the application along with the expected dates of construction and commencement of use of the access.

(d) Corporate or agency applicant. When the owner or applicant is a company, corporation, government agency or other entity, the application must provide the office, title, and the name of the responsible officer. A corporation must be licensed to do business in the State of Utah.

(e) Misrepresentation. Intentional or negligent misrepresentation of existing or future conditions or of information requested for the application for the purposes of getting a more favorable determination is sufficient grounds for the rejection or denial of the application or revocation of a conditional access permit and encroachment permit.

(f) Non-refundable application review fees. A non-refundable application review fee shall be assessed for the review and assessment of the conditional access permit application and the temporary conditional access permit application. The non-refundable review fee may be waived for local government agencies where a public street connection is being made.

(i) The Department shall establish and collect a reasonable schedule of fees for the review and administration of all applications referenced in this rule. The appropriate application fees may be found in the Department's authorized schedule of fees.

(ii) The application review may not proceed until payment has been received by the Department. The application shall not be considered submitted until payment has been received.

(6) Application review and approval.

(a) Completeness review. The Department shall review the application to verify the required information has

been submitted. If the Department determines an application to be incomplete, the applicant shall be notified in writing including by, but not limited to, email notification. The notice shall include any outstanding items, issues, or concerns. Upon receipt of the Department's correspondence requesting more information, the applicant shall timely provide additional data and information as appropriate or withdraw the application. The applicant is required to submit the necessary information as determined by the Department to complete the application within 30 calendar days of said request. Otherwise the application may be considered withdrawn.

(b) Completeness review period. The typical completeness review period is ten working days. This review period begins when the applicant submits a completed application packet with all required components for approval and has rendered the appropriate non-refundable application review fee. Once additional requested information is submitted, or resubmitted, by the applicant the (10) ten-day completeness review period starts over.

(c) Application review. The Department shall begin processing the application when the application has been identified as complete. The Department shall use this rule and any other applicable state and federal laws, policies, or guidelines to evaluate and act on the application. If during the review of the application it is found that additional information for review is necessary, the Department shall correspond in writing to the applicant the need for additional information. Written notification may include, but not be limited to, email notification. The application review period may be lengthened or begin again when the applicant submits significant additional information.

(d) Signatures. When this rule or related official forms require the signature of the permittee(s) or applicant, the signatures shall be that of the specific individual or if a corporation or partnership or other entity, the duly authorized officer or agent of the corporation or partnership or other entity. The applicant shall include the name of the corporation, partnership, or entity with the signature.

(e) Application review period. The typical application review period is forty-five working days.

(f) Action by the Department. As determined by the requirements of this rule, the Department may approve the conditional access permit as proposed, require layout, design and location modifications as it considers appropriate, restrict one or more turning movements as necessary to reduce traffic and safety impacts, or deny the request.

(i) The application shall be denied if the proposed access cannot meet the requirements or standards of this rule including consideration of appropriate variance criteria or other applicable laws. If the Department denies the application, the Department shall provide a written explanation of the decision.

(ii) Upon permit approval, the Department shall prepare a conditional access permit document and transmit it to the applicant.

(iii) The issue date of the conditional access permit shall be the date the Department representative signed the permit.

(g) Conditional access permit expiration. A conditional access permit shall expire if the access construction is not completed within twelve months of the permit issue date or before the expiration of any authorized extension. When the permittee is unable to complete construction within 12 months after the permit issue date, the permittee may request a 12-month extension from the Department. No more than one 12-month extension may be approved under any circumstances. The applicant must submit a request for an extension in writing to the Department before the original 12-month period expires. The request shall state why the extension is necessary, when construction is anticipated, and include a copy the conditional access permit approval. Extension approvals shall be in writing and may include, but not be limited to, email documentation. For any access approval that has expired, the applicant shall begin the application procedures again. Once an issued permit has expired any prior approval is null and void. Any subsequent application must conform to the latest permitting standards and conditions without reliance upon any past conditions that may have been deemed acceptable on any previously approved, but expired, permit.

(h) The Department shall maintain a copy of the conditional access permit issued for as long as the access point is in existence, or as otherwise prescribed by law.

(7) Additional requirements for limited-access and no-access control line modifications.

(a) The following procedures and standards apply to requests for the modification of a limited-access or no-access line.

(i) No-access control lines. A modification of a no-access line for the purpose of creating a new access point may be allowed to create a city or county street connection as proposed by the local authority where no other reasonable alternate access to abutting property can be provided.

(ii) Limited-access control lines. Only in cases where, in the determination of the Department, significant public benefit is expected may new access points be authorized through an established limited-access line. A request for a new or modified access opening shall be submitted by the property owner or local authority in writing to the Department and must clearly identify the proposed public benefit resulting from the access opening.

(iii) If there are other justifications for the access opening that are not solely for the public's benefit, the applicant shall identify those justifications and any public interests served by those justifications.

(iv) Upon review of the application, the Department, in its sole discretion, shall determine whether there is a sufficient public benefit to justify allowing the proposed new or modified access opening.

(b) Extended review period for limited-access and no-access control line modifications. While most requests for a new access opening may be reviewed within 45 days, additional review time may be needed for these types of applications that can require an external review by the Federal Highway Administration. There is no fixed amount of time that the Department may take to review a request to create or modify an access control line. Complex or incomplete requests may take longer than 45 days to review and approve or deny.

(c) Corridor agreements. Requests to modify a limited-access line may require the applicant to produce or provide analysis for a signal control plan or access corridor control plan. Requests to modify a no-access Line must include a signal control plan agreement or access corridor control plan agreement.

(i) If no such agreement exists, the applicant must complete an analysis that the Department may use to create or modify a signal control plan or access corridor control plan.

(ii) The Department, local authorities and, if one exists, the Metropolitan Planning Organization, must ratify signal control plan and access corridor control agreements.

(iii) Signal control plans and access corridor control plans must be consistent with the local authority's transportation master plan. Such plans must also conform to the Metropolitan Planning Organization's plans and designs.

(d) Approval or denial decision. Upon recommendation of Department staff, the Department Deputy Director or designee shall approve or deny the conditional access permit request for changes to limited-access lines or no-access lines and send notice of the decision to the applicant. FHWA review is required for federal-aid roads based on the

Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(e) Fees and reimbursements. The Department considers access rights a real property interest that the Department may sell upon payment of fair market value. Alternatively, the Department may retain ownership and allow an access by conditional access permit, with a reduced fee that takes into account exchanges of value received by the Department or that are otherwise in the public interest. Any changes to limited-access or no-access lines require reimbursement to the Department of its fair market value or a conditional access permit. Fair market value shall be determined by an independent licensed appraiser as listed within the Department's certified pool of approved appraisers. The fee for a conditional access permit is its fair market value, less offsets for adequately supported exchanges of value offered by the applicant and accepted by the Department. The Department may apply a credit to a purchase or a conditional access permit fee in the following circumstances:

(i) when the applicant shows that an exception to charging fair market value or the full conditional access permit fee amount is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use;

(ii) use by public utilities in accordance with 23 CFR part 645;

(iii) use by railroads in accordance with 23 CFR part 646;

(iv) use for bikeways and pedestrian walkways in accordance with 23 CFR part 652;

(v) uses under 23 USC Section 142(f), Public Transportation; or

(vi) use for other transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in 23 USC Section 710.703, shall not constitute a transportation project exempt from fair market value requirements. For example, the Department may allow credit against a conditional access permit fee for proposed mitigation of impacts caused by any change to limited-access or no access lines, including without limitation where the private person is relinquishing access rights, where the person agrees to permit future safety modifications to the access without compensation, where the person has committed to dedicate the access and related improvements to a municipality, and/or where the person has agreed to dedicate additional right-of-way to the Department beyond or in addition to any right-of-way required to accommodate safety features required by the access opening (e.g., acceleration and deceleration lanes). Because access costs are a major consideration for any development-related initiative, grantee or applicant should obtain the appraisal at the beginning of a proposed purchase or conditional access permit application process. Upon approval to modify a limited-access line or no-access line, the grantee or applicant must pay a conditional access permit fee, or the fair market value of the access right acquired from the Department. The property owner shall also pay all costs for construction of gates, approaches and any other incidental construction costs involved. Since the functions and responsibilities of local governments serve public interests, the Department may waive or share in the costs of providing access rights to a local government.

(f) Recorded deed. The Department, in consultation with the applicant, shall execute and record any deeds associated with an approved conditional access permit on the appropriate property deed indicating the access opening. The applicant shall revise all maps and plans as necessary to facilitate the conditional access permit approval process as required by the Department.

(g) Review considerations. Department and, if applicable, FHWA staff shall investigate safety and other operational features and impacts of the request review and comment on the following:

(i) Finding or demonstration of no reasonable alternate access and,

(ii) Providing the access connection to a local street system or an identified local street system on which:

(A) The opening is identified on the local master street plan,

(B) The opening provides continuity to other local streets,

(C) The opening provides reasonable alternate access via the local system,

(D) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(iii) Identifying the access on an agreed local signal control or access corridor control plan on which:

(A) The opening provides continuity to other local streets,

(B) The opening provides reasonable alternate access via the local system, and

(C) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(h) Revision of access openings. If a property owner desires to change the location, use, or size of an access opening, after execution of the deed, a new application must be submitted to the Department giving the location of the desired change and its justification. Changes shall comply with the standards and requirements of this rule.

(i) The Department shall evaluate the application to determine if the change in location, use, or size will cause any adverse safety or other traffic operational effects and submit a report with recommendations to the Deputy Director.

(ii) If the change is approved by the Deputy Director and by FHWA for federal-aid roads, new deeds shall be prepared and executed, and all maps corrected.

(iii) The property owner shall pay for all costs involved in closing or modifying an existing access opening.

(iv) External requests for modification of access control shall be forwarded with recommendations to the Department by the local authority.

(8) Encroachment permit requirements.

(a) General. No work on the state highway right-of-way may begin until an approved encroachment permit is issued by the Department and the permittee is authorized in writing to proceed. Written authorization may include, but not be limited to, email.

(i) Prior to any construction, the applicant must receive approval for an encroachment permit (related to the conditional access permit approval) with appropriate traffic control, construction plans, bonds, and insurance requirements. The applicant must attach a copy of the conditional access permit document to the encroachment permit application.

(ii) All construction materials, techniques, and processes shall be in conformance with the terms, conditions, and limitations of the permit and consistent with Department requirements and standard specifications.

(b) Permit fees. A non-refundable review fee shall be assessed for approved encroachment permits. The Department may not authorize the permittee to begin work on the state highway until the permit fee is paid.

(c) Notice of construction and work completion time-frames. The permittee shall notify the Department at least (2) two working days prior to any construction within state highway right-of-way. The permittee shall execute access construction in an expeditious and safe manner. Access construction must be completed within (90) ninety days from initiation of construction within the highway right-of-way.

(d) Phased construction of access. Upon request, the

phasing of the installation of access design requirements may be allowed if the average use of the access at any time does not exceed the constructed design and the Department or local authority is provided monetary or legal guarantees that access approval terms, conditions and limitations shall be met prior to any use of the access exceeding the existing design of the access.

(i) The following items may be used to provide the monetary or legal guarantees referenced above:

(A) Posting a bond.

(B) Irrevocable letter of credit.

(C) Any other techniques as approved and accepted by the Department.

(ii) All such arrangements shall be included as terms, conditions, and limitations of the permit.

(iii) The local authority and Department may record notices in the county records of such agreements to inform future property owners of potential liabilities and responsibilities.

(iv) If the project is to be phased over time, the schedule, location and other details of each phase must be provided as part of the application for an encroachment permit.

(e) Traffic control. The permittee shall provide appropriate construction traffic control devices at all times during access construction in conformance with the MUTCD and UDOT standard drawings for traffic control.

(i) The applicant shall provide traffic control plans detailing the location, duration, design, use, and traffic controls of the access.

(ii) Construction may not commence until the traffic control plan has been approved by the Department.

(iii) Traffic control plans must be sealed (stamped) by a Professional Engineer licensed in the State of Utah or, when determined appropriate by the Department, a certified Traffic Control Supervisor.

(iv) Traffic control plans must conform to the current MUTCD and Department requirements and standards, including Department Traffic Control Standards and Specifications.

(v) Traffic control plans must address the following:

(A) Construction phasing.

(B) Lane/shoulder closures.

(C) Tapers and device spacing.

(D) Sign boards, arrow boards, and variable message signs.

(E) Temporary modifications to traffic signals.

(F) Time restrictions and work schedule.

(G) Lane shifts.

(H) Flagging operations.

(vi) Traffic control plans may be revised as necessary with Department concurrence.

(vii) The Department may establish a fee schedule to charge an hourly fee or daily fees for the closure of any travel lanes necessary for the construction of a private access. The purpose of the fee is to encourage the quick completion of all work that reduces highway capacity and safety or interferes with the through movement of traffic.

(f) Professional evaluation. For any permit involving changes to state highways or structures, the Department may require the permittee to hire a Professional Engineer licensed in the State of Utah to inspect the access and state highway and structures carefully and to affirm to the best of their knowledge and belief that the construction is in compliance with the permit, Department specifications, materials construction monitoring and testing, and to report any item that may not be in compliance or cannot be determined to be in compliance and the nature and scope of the item relative to compliance. The Department may require testing of materials at the permittee's expense. When so required by the Department or as specified on the permit, test results must be provided to the Department.

(g) Construction operations. Installation of highway and access elements must be in compliance with all Department requirements for conditional access permit and encroachment permits, the UDOT standard drawings and the state or local health ordinance specifications for culverts, catch basins, drainage channels, and other drainage structures.

(i) Applicant must ensure adequate sight distance for traffic operation and comply with the requirements of the Department approved traffic control plans during all construction operations.

(ii) Applicant must provide proper drainage, suitable slopes for maintenance operations, and good appearance during construction operations.

(iii) Trees, shrubs, ground cover, or other landscape features may need to be removed, replaced, or suitably adjusted.

(iv) Applicant must free the construction buffer area, as defined by Department traffic control standards from any encroachment that will hinder traffic. Applicant must grate or landscape the buffer area between driveways to prevent use by vehicles while protecting clear sight across the area.

(9) Withdrawn applications.

(a) No payment. A permit shall be deemed withdrawn if the Department has not received the signed copy of the permit or the non-refundable application review fee payment, if any, from the applicant within (30)thirty calendar days of the date of approval transmittal.

(b) Non-responsive applicant. The application may be deemed withdrawn if the applicant fails to provide requested documents, plan alterations, or similar application components as required by the Department within 30 calendar days of such a request. The clock for a non-responsive applicant starts anytime the Department provides the applicant a written request for additional information, plan alterations, or other application components deemed necessary to effect further review of the application. Written requests for additional information may include, but are not limited to, email. Prior to deeming a nonresponsive application withdrawn, the Department shall make a minimum of (2) two direct contact attempts in approximately (2) two-week intervals to advise an applicant that their application is in jeopardy of being terminated and classified as withdrawn. Contact attempts may be made in person, via email, written letter, or phone call.

(c) Resubmission. Once an application is deemed withdrawn, the applicant must:

(i) Submit a new application.

(ii) Include a complete re-submittal of the current plans and studies.

(iii) Pay a new non-refundable application review fee.

R930-6-9. Conditional Access Permit Variances.

(1) General.

(a) This section describes procedures and requirements for applicants to request a variance from the standards and requirements of this rule relating specifically to conditional access permits.

(b) Variations from provisions of this rule may be allowed if they do not violate state and federal statutes, laws, or regulations and the Department has determined the proposed applicant mitigation measures documented in a variance request are sufficient for the safety and operation of the of the state highway.

(2) variance format.

(a) A variance may be considered for any design standard of this rule that is not applicable or feasible given the proposed physical and operational characteristics of the site. Applicants seeking a variance from the standards and requirements of this rule must submit a thoroughly detailed variance request using the Department's Variance Request Form. The Department may allow a request for a variance as a

supplement to a previously submitted application if the Department determines that it is in the public interest to do so.

(i) General requirements. The applicant is responsible to demonstrate that the variance request meets minimum acceptable engineering, operation, and safety standards. It must also demonstrate it is not detrimental to the public health, welfare, and safety and that it is reasonably necessary for the convenience and welfare of the public.

(A) The request for a variance must specify, in writing, why the variance is appropriate and necessary. The request must include documentation of conditions with and without the variance including all practical mitigation alternatives. This documentation must demonstrate that better alternatives in terms of highway operations are impracticable or do not exist.

(B) The applicant must show that the variance request results from the application of the standards or requirements of this rule and is not self-created or self-imposed. For example, the applicant acting with or without knowledge of the applicable standard, requirement, or purchasing the property with no access or existing access.

(ii) Existing non-conforming access. Non-conforming modifications to an existing highway access that is either in use or can demonstrate historical use and does not comply with the provisions of this rule, may be allowed when the applicant demonstrates to the Department that the proposed access point(s) modifications will improve the operation and safety of the highway. Consolidation of existing access points is considered a public benefit to highway operations and is encouraged. Where there are multiple existing accesses serving a site, the Department shall consider an overall permanent reduction of access point(s) as one justification element when contemplating the merits of a variance approval.

(iii) Limited-access and no-access facilities. Variance requests to modify a limited-access line or no-access line shall include detailed reports of appraisals, costs and justification for the variance. A request to modify a limited-access line or no-access line shall be treated as a request for variance. The Department may consider variances from the provisions of this rule for limited-access facilities when a careful appraisal reveals extensive damage, or if needed frontage roads would involve excessive right-of-way costs or construction costs.

(b) Department review considerations. The Department shall not approve variances that, in the Department's determination, pose hazards to public mobility, health, safety, and welfare. The Department shall not authorize variances for procedural requirements. The Department shall review the variance request for consistency with the purposes of this rule. The Department shall consider the following specific factors in determining that the approval of a variance will not negatively impact the current and proposed operation of the highway:

(i) The applicant has considered all other feasible alternatives to provide reasonable alternate access to the property or development and can demonstrate that better alternatives in terms of highway operations are impracticable or do not exist.

(ii) The applicant has considered access through, or entered into, a shared use driveway or access point agreement with an adjacent land use. If no such agreement is included with the variance request as a mitigation measure, the applicant must demonstrate such a shared use access is not feasible.

(iii) The applicant is providing on-site or off-site traffic improvements that might offset the negative impacts of approving an access that does not meet the provisions of this rule.

(iv) The applicant has considered and demonstrated trip reduction strategies that allow the access to properly function without creating a negative impact to the highway.

(v) The applicant has provided traffic engineering or other studies (if requested) to determine that the access will not degrade the efficient flow of traffic on the highway in terms of safety, capacity, travel speed, and other functional features of the highway.

(c) Department review period. The review periods defined within this rule for conditional access permit applications shall apply to a request for variance.

(d) Department documentation. The Department shall include in its files documentation of reasons for approving or denying a variance request.

(e) Limitations and conditions of variance approval. An approved conditional access permit or encroachment permit may stipulate conditions and terms for the expiration of the permit when the necessity for the variance no longer exists. It may also require the permittee to improve, modify, eliminate, or correct the condition responsible for the variance when it is evident that the justification for the variance is no longer valid. Such stipulations and requirements shall be stated in the approved permit.

R930-6-10. Conditions of Right-of-Way Use.

(1) General.

(a) This section describes conditions that apply to all connections, encroachments, and uses of the state highway right-of-way. The conditions and requirements of this section are in addition to other conditions, limitations, and requirements of this rule and the conditional access permit and encroachment permit.

(2) Right-of-way encroachment requirements.

(a) Prohibited right-of-way uses. The state highway right-of-way shall not to be used by anyone other than the Department for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of advertising, or conducting of private business.

(i) The Department at its sole discretion may waive the provision of (2)(a) for electric vehicle charging stations, approved park and ride lots, and dedicated meter parking stalls only in instances where a formal written agreement has been agreed upon and executed between the Department and the local government within which the waiver is requested.

(b) Buildings and structures. The placement of buildings or structures of any type within state highway rights-of-way is not allowed unless authorized by a permit obtained from the Department.

(c) Special advertisement may be allowed within the state highway right-of-way if it will not compromise traffic flow or safety and will be in the public interest. An approved encroachment to occupy the right-of-way for such advertising may be issued, for a time not to exceed one week. All such special advertisement shall not conflict with any provisions of Utah's Outdoor Advertising Act.

(d) Mailboxes. Installation of new mailboxes must be approved by the appropriate Department Region Director or an authorized representative. All new mailboxes placed within a state highway right-of-way must be constructed in conformance with UDOT standard drawings. Existing mailboxes located within the state highway right-of-way must be maintained or corrected to conform to the Department standards. Owners of mailboxes deemed nonconforming shall be notified in writing by the Department Region Director or an authorized representative. Within thirty days of receipt of notice, the owner must, at its own expense, reconstruct the mailbox or otherwise correct any deficiencies to conform to current safety standards and regulations of the Department. The Department may contact the postmaster and stop delivery of mail until compliance is achieved. Mailboxes may be deemed nonconforming for the following:

(i) Mailboxes that constitute a traffic hazard are considered nonconforming.

(ii) Mailboxes and supports that are in poor repair and detract from the appearance of the highway may be considered nonconforming.

(iii) Any part of a mailbox that is over 50 inches high is considered nonconforming

(iv) Any part of a mailbox that is located within the shoulder is considered nonconforming.

(v) Mailbox supports that exceed any of the following criteria are considered nonconforming:

(A) Wood support with over 16 square inches cross-sectional area.

(B) Metal support with greatest dimension over 3.5 inches.

(C) Metal pipe support of over 2 inches in diameter.

(D) Other metal supports deemed to be a hazard by the appropriate Department Region Director or an authorized representative.

(e) Special limitations. All encroachments on state highway, including permits issued for special encroachment, are subject to the following conditions and limitations:

(i) Red or reddish colored lights. Red or reddish colored decorations or advertising lights are prohibited within the right-of-way.

(ii) Clearance over highway surface. Any decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item placed within the right-of-way must have a minimum vertical clearance of 20 feet.

(iii) Utility poles. No decorations, displays, flags, banners, colored lights, handbills, structures or other advertising or decoration items may be attached to a utility facility without written permission of the appropriate entity or owner.

(iv) Highway control obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may block the normal view of any official highway sign or other traffic control device and signals.

(v) Shapes similar to highway control devices. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may be of such shape, size, color or design similar to any Department traffic control sign, signal, marking or device.

(vi) Attachments to traffic signals. No attachments of any type may be allowed on traffic signals.

(vii) Sight obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may obstruct the normal view of traffic nor may obstruct, impede or endanger the normal flow of traffic. In accordance with Utah Code Section 41-6a-216 "Removal of plants or other obstructions impairing view, Notice to owner - Penalty," owners of real property next to state highway rights-of-way shall be ordered to remove any trees, plants, shrubs, or any other obstructions that obstruct the view of motorists and thereby constitute a hazard.

(3) Department changes to existing access.

(a) The Department may, when necessary for the improved safety and operation of the roadway, rebuild, modify, remove, or relocate any access or redesign the highway including any auxiliary lane and allowable turning movement.

(i) The Department shall notify the permittee or current property owner of the change.

(ii) Changes in roadway median design that may affect turning movements normally does not require a hearing because a conditional access permit approval confers no private rights to the permittee regarding the control of highway design or traffic operation even when that design affects access turning movements.

(iii) In order to eliminate public road access, a study shall be made in conjunction with local authorities for a feasibility of dead ending or rerouting of intersecting roads.

(4) Permittee requirements and limitations.

(a) Conditional access permit limitations. An approved conditional access permit conveys no rights, title, or interest in state highway rights-of-way to the permittee or property served. A conditional access permit for direct access to a state highway does not entitle the permittee to control or have any rights or interests in any portion of the design, specifications or operation of the highway or roadway, including those portions of the highway built pursuant to the terms, conditions and limitations of the conditional access permit.

(b) Completion requirements. Prior to using the access, the permittee is required to complete the construction according to the terms, conditions and limitations of the conditional access permit and required encroachment permit. Department approval is required if the permittee wishes to use the access prior to completion.

(c) Access transferability and maintenance. The permittee, his or her heirs, successors-in-interest, assigns, and occupants of the property serviced by the access is responsible for meeting the terms, conditions and limitations of the permit, including, but not limited to the following maintenance requirements:

(i) Ensuring that the use of the access to the property is not in violation of this rule and terms, conditions and limitations of the permit.

(ii) Repairing and maintaining the access beyond the edge of the roadway, including any cattle guard and gate.

(iii) Removing or clearing snow or ice upon the access, including snow or ice deposited on the access in the course of Department snow removal operations.

(iv) Repairing and replacing any access-related features within the right-of-way, including culverts. Any significant repairs, such as culvert replacement, resurfacing, or changes in design or specifications requires authorization from the Department.

(d) Notification of changes. The permittee shall contact the Department if changes are made or will be made in the use of the property which would affect access operation, traffic volume, or vehicle type to determine if a new conditional access permit is required.

(e) Indemnification requirements. Permittees must, at all times, indemnify and hold harmless the Department, its employees and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, operation, or use of an access or other facility.

(f) Insurance, bonding and letter of credit requirements. The permittee is responsible for the maintenance of the construction performed within the state highway right-of-way for a period of three years from the date of beginning work or two years from the end of work, whichever provides the longer period of coverage.

(i) Insurance. Permittee is required to maintain minimum liability insurance as specified in Utah Administrative Code R930-7-6.

(ii) Bonding. As authorized by Utah Code Subsection 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a performance and warranty or maintenance bond, using the Department's approved bond form as specified in Utah Administrative Code R930-7-6.

(iii) Proceeds Against Bond. The Department may proceed against the bond to recover all expenses incurred if payment is not received from the permittee within (45) forty-five calendar days of receiving an invoice. Upon discovery of permittee caused damage to the highway or to the right-of-way, the Department may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right-of-way due to permittee caused damages. Failure by the permittee to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the closure of the access to from the state highway right-of-way.

(iv) Letter of credit. For small projects, the Department may accept an irrevocable letter of credit as reasonable security in lieu of bonding. A letter of credit shall be issued by a federally insured bank authorized to do business in Utah and shall be placed in the possession of and payable upon demand only to the Department. A letter of credit shall be irrevocable during its terms and shall be automatically renewable, or the applicant shall insure continuous coverage by replacing letters of credit, if necessary, at least (30) thirty days before the expiration date with other acceptable bond types or letters of credit.

(5) Existing interests.

(a) Historical interest. The Department recognizes that pre-existing property interests within the state highway rights-of-way may exist. Proof of a pre-existing property interest within a public right-of-way must be provided to the Department in the form of a duly executed deed, grant or other document establishing the same are required to establish prior right or title of the entity or person. In the absence of such proof, it shall be assumed that the entity or person occupies the right-of-way under permit (i.e., by permission), and enjoys no vested interest in the state highway right-of-way. In those instances when the Department requires an entity or person with a pre-existing property interest to move completely or partially off the right-of-way, the Department shall make appropriate remuneration for the relinquishment of that interest.

(i) The adoption of this rule by the Department does not constitute an acceptance or recognition of pre-existing property interests.

(ii) The Department assumes no liability associated with these interests and uses; either for the safety to users or the traveling public, damage to property, or for the continued use thereof.

(b) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(c) Permittee improvement of existing access. The property owner or authorized representative served by a lawful access may make physical improvements to the access per the requirements of this rule and only with the written permission of the Department. Denial of the application for improvements does not constitute revocation of the existing access authorization. Denial of an application to enlarge, relocate, or modify an existing lawful access, in no way impairs the permit for or right to the existing access for its legal historical use.

R930-6-11. Progressive Corrective Action Process for Permit-Related Violations, Notification Protocols, Mitigation Plan Requirements, Related Fees, Informal Administrative Appeal Hearings, and Matters Related Thereto.

(1) This section prescribes the progressive process within which the Department may set about remedying identified safety hazards, or other permit-related violations, arising out of permits issued under the Statewide Utility and Encroachment Permitting Program. It also details the informal administrative appeals process relating to this rule and other matters germane to this section including Conditional Access Permit and Variance appeals. The corrective action process shall be applied as necessary as determined by the Department. All persons, firms, and corporations legally authorized to work within the State right-of-way must exercise a level of care and compliance that continuously reflects a responsible attitude towards complying with all permit requirements and applicable rules and statutes.

(a) Verbal Warning: A verbal warning may be given to correct a minor safety, or other permit-related violation if the violation is:

(i) immediately correctable and;

(ii) not a repeat, or recurring violation, previously encountered with the same permittee or entity working in the right-of-way.

(b) Written Notice of Violation: A written Notice of Violation shall be given anytime an identified violation:

(i) is a repeat minor safety issue; or

(ii) was subject to a previous verbal warning for the same minor violation by the same permittee or entity performing work within the right-of-way

(c) Stop Work Order:

(i) An immediate Stop Work Order shall be issued when an identified permit or law violation results in, or contributes towards, an onsite injury or vehicle accident; or if, solely in the Department's determination, allowing the activity to continue without additional project planning and review may result in unacceptable mobility delays, or if there is belief that allowing the activity to continue creates an unacceptable safety risk due to either known, or unknown factors.

(ii) An immediate Stop Work Order may be issued any time after two (2) or more Notices of Violation have been issued to the same permittee, contractor, or subcontractor for the same or similar violation within any twelve (12) month period; or anytime unauthorized (unpermitted) work is being conducted within the State right-of-way.

(iii) Any person who commits an act prohibited by Utah Code section 72-7-102(2) after the Department has issued a Stop Work Order under this subsection R930-6-11(1)(c) is subject to prosecution for a class B misdemeanor pursuant to Utah Code section 72-7-102(7).

(iv) The Department may install physical barriers to prevent unauthorized work within the State right-of-way or take any other action that is deemed necessary to stop unauthorized use. Any costs relating to enforcement activities and any cost required to restore the State right-of-way to the before condition shall be paid by the person, firm, or corporation responsible for the unlawful use of the State right-of-way. This includes, but is not limited to, any person, firm, or corporation that hires a contractor or subcontractor to perform the work as well as the individual(s) or entity conducting the work.

(d) Permit Revocations, Suspensions, and Debarment: The Department may revoke already issued permits, suspend issuance of future permits, and seek debarment for cause when the permittee or other party has:

(i) demonstrated recurring permit-related violations;

(ii) failed to voluntarily and timely correct an identified permit-related violation;

(iii) commenced work activity within the State right-of-way without first acquiring a required permit;

(iv) failed or refused to comply with a Stop Work Order;

(v) failed to render timely payment for any authorized, or incurred, permit-related fees.

(vi) Such revocations, suspensions, or debarment may be time-limited for a period up to three years.

(2) UDOT permit violation notification protocols.

(a) The Department may notify any interested third-party utility owners relating to contracted permit work, including utility owners when permitted work is authorized under a Statewide Utility License Agreement, anytime a contractor or subcontractor receives a Notice of Violation or is subject to additional corrective action(s) beyond the Notice of Violation stage of the corrective action process.

(i) Such notifications may be made in writing (email) or;

(ii) Through a direct meeting with any combination of interested parties.

(b) All corrective action processes exercised by the Department, beyond the Verbal Warning stage, shall consist of a written notice being issued in the field at the time the violation

is first identified.

(i) A copy of said notification shall also be mailed or emailed to the permittee identified on the corresponding permit record (if available) and;

(ii) If an identifiable permittee, contractor, or subcontractor is not available at the worksite location when a permit violation is identified, the Department shall post a copy of said notification in a conspicuous place at the worksite and record photographs of the posting.

(3) Mitigation plan and reinstatement requirements. Any person, firm, or corporation that has been subject to a Stop Work shall submit a comprehensive written mitigation plan before the Department may consider restoring any privileges to work within the State's right-of-way.

(a) Timing. Any person, firm, or corporation wishing to submit a written mitigation plan must do so within one calendar week from the date the Stop Work Order was issued.

(b) Mitigation plan contents. The mitigation plan shall contain:

(i) a clear summary of all corrective action steps being taken to prevent, eliminate, or minimize the identified violation(s) from recurring;

(ii) a statement regarding how each corrective action step will be implemented;

(iii) a clear timeline indicating when each corrective action step will be completed; and

(iv) any other information that may aid the Department in making an informed decision on behalf of the affected party.

(c) Department review of mitigation plan. The Department shall review any submitted mitigation plan and render a determination as to whether or not the proposed remedies are sufficient to warrant consideration for the affected party to lawfully re-enter the State right-of-way on a limited, full-scale, or other basis. The Department may accept the plan as written, accept the plan with modifications, or reject the plan altogether.

(d) Required reinstatement and violation fees. Where the Department has determined a mitigation plan is acceptable, before any new permits are issued and before any work is continued on any previously issued permits, the affected party must render any appropriate reinstatement fee and/or violation fee as listed within the Department's authorized fee schedule.

(4) Informal Administrative Appeal Options for all permit or variance Denials, Revocations, Suspensions, or Debarments.

(a) The permittee, contractor, subcontractor, or other identified interested party, affected by a permit or variance Denial, Revocation, Suspension, or Debarment may file a timely informal appeal using the Department's online appeal form.

(i) Instructions on the informal appeal process will be made available with all permit or variance Denials, Revocations, Suspensions, or Debarments.

(ii) Any appeal of Department action must comply with, R907-1, and Utah Code Title 63G Chapter 4, Administrative Procedures Act including receipt of appeal within 30 calendar days of the Department's action.

(b) Designation of Presiding Officer. Per Utah Code Section 63G-4-103(1)(h)(i), the assigned Statewide Program Administrator is the Department's Presiding Officer for purposes of signing any Notices of Agency Action that leads to any Revocations, Suspensions, or Debarments under this section.

(c) UDOT Hearing Officer assignment determination.

(i) Single Region Appeal: For corrective actions, or denials, affecting permits in a single UDOT Region, the appropriate Region Director shall act as the Department's Hearing Officer.

(ii) Multi-Region Appeal: For corrective actions, or denials, affecting permits in multiple UDOT Regions, the Executive Director's designee shall act as the Department's Hearing Officer.

(d) Legal representation for UDOT Hearing Officers.

(e) All Department hearing officers shall be assisted by a designated State of Utah Assistant Attorney General during the hearing and drafting of the final order.

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	72-3-109
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	72-7-103
	72-7-104
	72-7-105
	72-7-503

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-101. Authority.

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104, 35A-1-302, 35A-1-303, 35A-1-306, 35A-3-103, 35A-3-111, 35A-3-302, 35A-3-603, and 35A-3-604.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

(a) Supplemental Nutrition Assistance Program (SNAP)

(b) Family Employment Program (FEP)

(c) Family Employment Program Two Parent (FEPTP)

(d) Refugee Resettlement Program (RRP)

(e) Working Toward Employment (WTE)

(f) General Assistance (GA)

(g) Child Care Assistance (CC)

(h) Emergency Assistance Program (EA)

(i) Adoption Assistance Program (AA)

(j) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above unless a more specific rule applies. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

(1) "AA" Adoption Assistance Program

(2) "ALJ" Administrative Law Judge

(3) "CC" Child Care Assistance

(4) "CFR" Code of Federal Regulations

(5) "DCFS" Division of Children and Family Services

(6) "DWS" Department of Workforce Services

(7) "EA" Emergency Assistance Program

(8) "FEP" Family Employment Program

(9) "FEPTP" Family Employment Program Two Parent

(10) "GA" General Assistance

(11) "INA" Immigration and Nationality Act

(12) "IPV" intentional program violation

(13) "ORS" Office of Recovery Service, Utah State Department of Human Services

(14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

(15) "RRP" Refugee Resettlement Program

(16) "SNAP" Supplemental Nutrition Assistance Program

(17) "SNB" Standard Needs Budget

(18) "SSA" Social Security Administration

(19) "SSDI" Social Security Disability Insurance

(20) "SSI" Supplemental Security Insurance

(21) "SSN" Social Security Number

(22) "TANF" Temporary Assistance for Needy Families

(23) "TCA" Transitional Cash Assistance

(24) "UCA" Utah Code Annotated

(25) "UI" Unemployment Compensation Insurance

(26) "USCIS" United States Citizenship and Immigration Services.

(27) "VA" US Department of Veteran Affairs

(28) "WTE" Working Toward Employment Program

(29) "WIOA" Workforce Innovation and Opportunity Act

(30) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63G-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

(a) basic remedial education;

(b) adult education;

(c) high school education;

(d) education to obtain the equivalent of a high school diploma;

(e) education to learn English as a second language;

(f) applied technology training;

(g) employment skills training;

(h) WSL; or

(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for SNAP, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except SNAP and CC, the individuals included

in the household assistance unit must be related to each other as described in R986-200-205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) SNAP; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance or certain exceptions under R986-200-218 are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For SNAP, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for SNAP, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for SNAP provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63G-2-101 through 63G-2-901 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the

information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving SNAP assistance can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving SNAP is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act, 7 USC 2011 et seq., as amended, or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for SNAP or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving SNAP must report a change in the household's gross income if the income exceeds 130% of the federal poverty level. The change must be reported within ten days from the end of the calendar month in which the change occurred. Changes reported by the tenth of the month following the month when the change occurred are considered timely; and

(b) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address;

(iii) if any eligible child leaves the household and the household receives FEP, FEPTP or AA;

(iv) if a parent, step-parent, spouse, or former spouse moves into the household or if a marriage or adoption occurs with or between the already reported household members;

(v) if a child becomes eligible for foster care or subsidized adoption financial assistance;

(vi) a change in student status of a child in the household;

(vii) if a client receiving TCA is not longer employed or is working less than an average of 30 hours per week;

(viii) if there is a change in disability status of a GA client; and/or

(ix) if a GA client becomes employed.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraph (2)(b) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-114a. Determining When a Document or Information is Considered Received by the Department.

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document or information received after 5 p.m.by Fax, postal mail, email or hand delivery, will be considered received the next day Department offices are open. If an application for assistance or other information is filed through the "myCase" system, it will be considered received the day it was filed online even if it is filed after 5 p.m. or on a Saturday, Sunday, or legal holiday.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for SNAP unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule and R986-100-117 to -135 apply to overpayments determined under contract with the Department of Health unless a Department of Health rule states otherwise.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification Periods And Civil Penalties For Intentional Program Violations (IPVs).

(1) An Intentional Program Violation (IPV) occurs when a person, either personally or through a representative, intentionally, knowingly, or recklessly (as those terms are defined in Utah Code Ann. Section 76-2-103 and as shown by clear and convincing evidence) violates a program rule, or helps another person violate a program rule, in an attempt to obtain, maintain, increase, or prevent the decrease or termination of public assistance payment(s) from any of the programs listed in R986-100-102. Acts which may constitute an IPV include but are not limited to:

(a) making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) taking, using or accepting a public assistance payment the person knew they were not eligible to receive or not reporting the receipt of a public assistance payment the person knew they were not eligible to receive;

(e) not reporting a material change as required by and in accordance with these rules;

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity;

(g) accessing TANF financial assistance benefits through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that:

(i) exclusively or primarily sells intoxicating liquor,

(ii) allows gambling or gaming, or

(iii) provides adult-oriented entertainment where performers disrobe or perform unclothed;

(h) using TANF financial assistance benefits to purchase beer, intoxicating beverages, cigarettes, or tobacco; or

(i) committing any act that constitutes a violation of federal or state law for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking SNAP or EBT cards.

(2) When an IPV is alleged, the Department may:

(a) Refer the case for criminal prosecution;

(b) In SNAP cases, refer the case for an administrative disqualification hearing (ADH); or

(c) In non-SNAP cases, issue an initial decision finding the person committed an IPV, which the person may appeal via the fair hearing process set forth in R986-100-123 to -135.

(3) The Department may not disqualify a person from SNAP unless an ADH has been held or the person has been criminally convicted. The Department may not make concurrent referrals for an ADH and criminal prosecution. If a SNAP case referred for criminal prosecution is dismissed or referred back to the Department without prosecution, the Department may refer the case for an ADH.

(4) A person who is found liable for committing an IPV in either an administrative or criminal proceeding shall:

(a) In the case of any program other than SNAP, be assessed a civil penalty of 10% of the amount of the overpayment; and

(b) In the case of any program other than Medicaid, be disqualified from receiving assistance from the program(s) at issue for a period of:

(i) 12 months for a first offense;

(ii) 24 months for a second offense; and

(iii) Permanently for a third offense.

(c) Disqualifications run concurrently.

(d) A disqualification applies only to the person(s) found to have committed an IPV. However, all adult members of the relevant household at the time the overpayment occurred shall be responsible for repaying the overpayment.

(e) Notwithstanding the foregoing, if a more specific provision of federal or state law provides for different sanctions for committing an act that constitutes an IPV, that provision is controlling.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The person being disqualified will be notified that a disqualification period has been determined. The

disqualification period shall begin no later than the second month which follows the date the person being disqualified receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired. The Department will also provide written notice to any remaining household members informing them of the allotment they will receive during the disqualification period.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Disqualification Penalties.

(1) A person found to have made a fraudulent statement or representation with respect to the identity or place of residence of an individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in SNAP for a period of ten years.

(2) A person found by a federal, state, or local court to have used or received SNAP benefits in a transaction involving the sale of firearms, ammunition, or explosives shall be permanently ineligible to participate in SNAP.

(3) A person convicted in federal, state, or local court of having trafficked SNAP benefits in an aggregate amount of $500 or more shall be permanently ineligible to participate in SNAP.

(4) In all other cases involving SNAP or TANF funds, a person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to SNAP will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff only in cases involving denial of expedited SNAP assistance.

(2) Clients may have an authorized representative attend the agency conference.

(3) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(4) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(5) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(6) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below or otherwise set forth by rule, interested persons will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the interested person's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify an interested person.

(2) Except for overpayments, advance notice is not required when:

(a) the interested person requests in writing that the case be closed;

(b) a client has been admitted to an institution under governmental administrative supervision;

(c) a client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the interested person's whereabouts are unknown and mail sent to the interested person has been returned by the post office with no forwarding address;

(e) it has been determined the interested person is receiving public assistance in another state;

(f) a child in a household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the interested person was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of the interested person if there is no other relative able to serve as a new payee;

(j) the relevant certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the interested person has provided information to the Department, or the Department has information obtained from another reliable source, that the interested person is not eligible or that payment should be reduced or terminated;

(m) the Department determines that the interested person willfully withheld information or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For SNAP recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through

(k) above apply.

(4) Notice is complete if sent to the interested person's last known address. If notice is sent to the interested person's last known address and the notice is returned by the post office or electronically with no forwarding address, the notice will be considered to have been properly served. If an interested person elects to receive correspondence electronically, notice is complete when sent to the interested person's last known email address or posted to the interested person's Department sponsored web page.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) An interested person has the right to a review of an adverse Department action by requesting a fair hearing before an ALJ.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged SNAP overpayment, the interested person must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the interested person must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the interested person disagrees.

(3) Only a clear expression by the interested person, whether orally or in writing, to the effect that the interested person wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made by contacting the Department.

(5) If the interested person disagrees with the level of SNAP benefits paid or payable, the interested person can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost SNAP benefits is made within one year of the loss of benefits an interested person may request a hearing within 90 days of the date of the denial of restoration.

(7) An interested person may contact the Department and attempt to resolve the dispute. If the dispute cannot be resolved, the interested person may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

(8) In cases not involving an overpayment or disqualification, if the interested person does not submit a timely appeal, the Department decision is final.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and for overpayments and IPVs in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication at the time of the hearing. If the party fails to call in as required by the notice of hearing, the appeal will be dismissed. If a party wishes to have the ALJ call them at the start of the hearing, the party must call the Department and make arrangements to that effect prior to the hearing.

(6) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Division of Adjudication unless the ALJ determines that another location is more appropriate. A party or witness may participate from the local Employment Center.

(7) the Department is not responsible for any travel costs incurred by any party or witness in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Party or Witness Needs an Interpreter at the Hearing.

(1) If a party or witness notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the party or witness.

(2) If an interpreter is needed at the hearing, the party may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the party or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the party the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the party and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the party to call and a notice that the party can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the party can examine the case file prior to the hearing.

(4) If a party has designated a person or professional organization as the party's agent, notice of the hearing will be

sent to that agent. It will be considered that the party has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and all parties agree, after a full verbal explanation of the issues and potential results.

(6) Each party must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A party may be represented at the hearing. The party may also invite friends or relatives to attend as space permits and consistent with the orderly progress of the hearing.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless an interested person requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the interested person requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of any party. A continuance shall be for no more than 30 days.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the Division of Adjudication. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) After a party has already had one hearing rescheduled, the party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order for Failure to Participate.

(1) Except in cases of SNAP IPVs as stated in R986-100-136, if a person assessed an overpayment or other sanction fails to participate in the administrative process, the Department shall issue a default order confirming the overpayment and any other sanctions and shall move to collect any overpayment by all legal means. Participation means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of an interested person and the interested person fails to appear at or participate in the hearing, either personally or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a default order dismissing the request for a fair hearing. A default order has the effect of upholding the initial Department decision.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default or Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a default order is issued, an adversely affected party may request that the default order be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request may be made orally or in writing as set forth in R986-100-123. A request to set aside a default order must be made within thirty days of the issuance of the default order. A request to reopen must be made within thirty days of the hearing date. If a request to reopen is made after a decision is issued, it shall be treated as a request to set aside a default order. If the request is made after the expiration of the relevant time limit, the requesting party must show good cause for not making a timely request. Good cause is defined as a showing that the delay was due to circumstances beyond the party's control, or that the delay was due to circumstances that were compelling and reasonable. Ordinary illness, lack of transportation, and temporary absence do not generally constitute good cause.

(3) The ALJ may, on his or her own motion, set aside a default order or reschedule, continue, or reopen a hearing if it appears necessary to take continuing jurisdiction based on a mistake as to facts or a change in conditions, or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, agree on behalf of the Department to set aside a default order on the same grounds.

(4) If a default order is not set aside or a hearing is not reopened under Subsection (3) above, the request to set aside or reopen shall be forwarded to the Division of Adjudication for assignment to an ALJ. The ALJ shall hold a hearing to determine whether to set aside the default order or reopen the prior hearing unless it is clear from the record before

the ALJ that the person seeking to set aside the default order or reopen the hearing cannot meet the applicable standards set forth in this rule or R986-100-132.

(5) If a request to set aside the default order or reopen the hearing is not granted, the ALJ will issue a decision denying the request. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A party may appeal the denial by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside or reopen and not the underlying merits of the case. If the denial is reversed on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default Order or Reopen a Hearing.

(1) A request to reopen a hearing or set aside a default order for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

(1) A person who has filed an appeal and requested a fair hearing may withdraw the request either orally or in writing by contacting the Division of Adjudication. The request to withdraw will be granted unless granting the request would impair the due process rights of another interested person. If the request to withdraw is granted, the Department shall issue a written decision dismissing the request. The granting of a withdrawal has the effect of upholding the initial Department decision.

(2) A person may reinstate a previously withdrawn appeal by making a request (either orally or in writing) to the Division of Adjudication that the appeal be reinstated. A request to reinstate must be made within ten days of the date the person receives the withdrawal decision. For purposes of this section, the withdrawal decision is considered to have been received three days after the mailing date on the decision letter. If the request to reinstate is made after the expiration of the ten-day time limit, the person must show good cause (as defined in R986-100-131) for not making the request within ten days.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate SNAP or RRP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause (as defined in R986-100-131) for failing to file in a timely fashion.

(3) A client affected by Subsection (1) can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, a client affected by Subsection (1) is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to a client affected by Subsection (1), the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to a client affected by Subsection (1) is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under FEP, FEPTP, GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer.

R986-100-136. SNAP Administrative Disqualification Hearing (ADH) Procedures.

(1) For alleged IPVs involving SNAP, an ADH will be held unless the client formally waives the right to an ADH in writing. If the client does not participate in the hearing, the ALJ will make a decision based solely on the evidence before the ALJ.

(2) The hearing procedures set forth in R986-100-123 through R986-100-135 apply to ADHs unless otherwise specified or inconsistent with this section.

(3) The Division of Adjudication will schedule all ADHs.

(a) A pending ADH has no effect on a household's eligibility or benefit level.

(b) The Department may withdraw a request for an ADH at any time prior to the scheduled hearing by sending written notice to the Division of Adjudication and all parties.

(4) A client may waive the right to an ADH by completing, signing, and returning the waiver form prepared by the Department.

(a) A completed, signed, and submitted waiver constitutes an agreement by the client to forego the ADH and accept the prescribed disqualification period.

(b) If the client accused of the IPV is not the head of household, the waiver must be signed by both the client accused of the IPV and the head of household to be effective. Waiver of the right to an ADH shall result in the client accused of the IPV and all other adult household members being held responsible to repay any overpayment.

(c) A client may rescind a waiver of the right to an ADH by submitting a written statement to the Division of Adjudication requesting that the waiver be rescinded. The written statement must be submitted within 30 days of the date the waiver was submitted, or before the start of the disqualification period, whichever is earlier. Once a valid written statement rescinding the waiver is received, the Division

of Adjudication will schedule an ADH.

(5) The notice of hearing shall contain, in addition to the items described in R986-100-127, the following:

(a) The charges against the client;

(b) A summary of the evidence, and how and where it can be examined;

(c) A statement that the client will, upon receipt of the notice, have 10 days from the date of the hearing to present good cause for failure to appear in order to receive a new hearing;

(d) A warning that a determination of IPV will result in a specific disqualification period, and a statement of which penalty the Department believes is applicable to the case;

(e) A listing of the client's rights as outlined in R986-100-128;

(f) A statement that the hearing does not preclude the State or Federal government from prosecuting the client for the IPV in a civil or criminal court action, or from collecting any overissuance(s); and

(g) A statement informing the client about what free legal services are available.

(6) The Division of Adjudication may combine a fair hearing and an ADH into a single hearing if the relevant factual issues arise out of the same or related circumstances.

(a) The notice of hearing shall inform the parties of whether a fair hearing and an ADH will be combined into a single hearing.

(b) If the hearings are combined, the applicable filing and hearing deadlines and timeframes are those contained in this section to the extent of any conflict.

(c) If the client fails to appear or participate in the combined hearing, the fair hearing will be dismissed but the ADH will still be held.

(7) The ALJ shall advise the parties that they have the right to refuse to answer questions during the hearing, and that the ALJ may draw reasonable adverse inferences based on a party's refusal to answer questions during the hearing.

(8) A qualified employee of the Department shall represent the Department at the ADH.

(9) Within 90 days of the date the notice of hearing is issued, the ALJ shall conduct the hearing, arrive at a decision, and issue written notice of the decision to the Department and all parties. If the ADH is postponed for any reason, the 90-day time limit will be extended by as many days as the ADH is postponed.

(10) If any party fails to participate in the hearing and disagrees with the hearing decision, the party may request reopening of the hearing as set forth in R986-100-131.

(11) If the ALJ determines the client did not commit an IPV, no disqualification shall be assessed. Any party, including the Department, may utilize the administrative review process set forth in R986-100-135.

KEY: employment support procedures, hearing procedures, public assistance, SNAP
June 1, 2019 35A-3-101 et seq.
Notice of Continuation September 2, 2015 35A-3-301 et seq.
35A-3-401 et seq.

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100% disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy;

(iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or

(v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony, or who are violating parole or probation for a felony or a misdemeanor, are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for

assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same month. This is true even if household composition has changed. If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits;

(c) the client is participating in FEPTP; or

(d) the client is an undocumented alien parent.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, undocumented alien parent, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child

are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 30 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(2) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving SNAP and the client is disqualified for non-participation under this section, the client will also be subject to the SNAP sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under SNAP regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated;

(m) former stepparents

(n) a Native American adult who has a Native American child placed in, or living in that adult's home, and both the child and the adult are members of, or eligible for membership in, a federally recognized tribe; and

(o) an adult of the same ethnicity, culture, country of origin, religion, language and/or nationality as the refugee/asylee child in his or her care.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, FEP rules apply.

(5) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated, or have a blood relationship to a dependent child who is in the home and who is included in the household for assistance purposes. This does not apply to specified relatives who are eligible under subsection (1)(n) and (o) of this section;

(6) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(7) The child must be currently living with, and not just visiting, the specified relative;

(8) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(9) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(10) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(11) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(12) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be

included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(13) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(14) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating diversion.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial

assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an exception under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An exception under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted;

(i) the client is currently participating in the Intergenerational Welfare Dependency Poverty Pilot Program, "Next Generation Kids" and needs additional time to obtain job training and preparation to decrease the risk of his/her children being part of intergenerational welfare dependency. This exception will not be available if the Pilot Program is to end; or

(j) parents who volunteer to fully participate in a Department-approved employment and training activity. Department approval will only be granted if all the requirements of Department rule 986-200-211(1)(a) through (f) are met.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment; or

(f) neglect or deprivation of medical care.

(3) Employment extension. An extension to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an exception under subsections (1) or (2) of this section, an exception can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an exception can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension or an exception must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions or extension listed above. Both parents need not meet the same exception or extension.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons for an exception in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including SNAP, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions and extensions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $450 for rent on April 1 and requests an additional EA payment of $300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $450 per family for one month's rent payment or $700 per family for one month's mortgage payment, and $300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-221. Drug Testing Requirements.

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be administered with due regard to the privacy and dignity of the person being tested. Before or after taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequence occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to complete a substance abuse questionnaire;

(b) refuses to meet with a licensed clinical therapist if required by the Department;

(c) refuses to take a drug test as required in subsection (2) or (3) of this section,

(d) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(e) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely

manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

(i) at the client's expense,

(ii) at a testing facility approved by the Department,

(iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and

(iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for SNAP, the $25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of SNAP, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person SNAP allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from

an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children, unless the child is participating in required employment or training activities.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of $100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this

person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

TABLE

Household Size	Payment Amount
1	$288
2	$399
3	$498
4	$583
5	$663
6	$731
7	$765
8	$801

Amounts for household sizes larger than 8 are available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive a payment to help defray the costs of that activity in addition to the standard financial assistance payment. Approved enhanced participation activities and the payment amount are listed in Department policy.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIOA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or earned and unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least $8 per hour. Commission only jobs may qualify if the employer guarantees $8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a $500 subsidy and an additional $1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

R986-200-249. Access to Assistance.

Financial assistance for FEP and FEPTP is provided through an electronic benefit transfer (EBT) card. The card, instructions on its use, and applicable fees will be provided to all clients. A method for obtaining assistance without a fee will be made available. In other circumstances, minimal fees or/or surcharges will apply. Information about obtaining assistance without a fee or surcharge, when fees or surcharges apply, and the amount of the fee or surcharge is available on the Department's website: jobs.utah.gov.

R986-200-250. Unauthorized Spending of TANF Financial Assistance Benefits.

(1) TANF financial assistance benefits may not be accessed through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that:

(i) exclusively or primarily sells intoxicating liquor,

(ii) allows gambling or gaming, or

(iii) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) TANF financial assistance benefits may not be used to purchase beer, intoxicating beverages, cigarettes, or tobacco products.

(3) Unauthorized spending of TANF financial assistance benefits may constitute an Intentional Program Violation. See Section R986-100-117.

KEY: family employment program, SNAP
June 1, 2019 35A-3-301 et seq.
Notice of Continuation September 2, 2015

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities, job search, or for an approved temporary change as defined in R986-700-703 may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, does not regularly watch his or her own children at the center, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is also the licensee or is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3), the Department may terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) if the client no longer needs child care;

(c) a change of address;

(d) a child receiving child care moves out of the home;

(e) a change in the child care provider, including when care is provided at no cost; and,

(f) when the child has stopped attending child care or has not attended child care for at least eight hours during the month for which CC was authorized.

(6)(a) The following are allowable temporary changes:

(i) Time-limited absences from work due to medical or other emergency, such as maternity leave, bed rest, or temporary medical issues of the client or an immediate family member living in the client's home if the client is responsible for the immediate family member's care;

(ii) Temporary fluctuations in earnings or hours, such as summer break for teachers or seasonal hours changes for IRS employees, that would otherwise have the effect of causing the client to fail to meet the minimum work requirements for eligibility;

(iii) Scheduled holidays or breaks in a client's educational training schedule;

(iv) An eligible child turning 13 years old during an eligibility review period, unless the child no longer has a need for child care; and,

(v) A client who has been approved for ongoing employment support child care at application or recertification

and has a permanent loss of employment may remain eligible through the remainder of that certification period.

(b) A client who experiences an allowable temporary change after having been approved for ongoing employment support child care (ES CC) may continue to receive child care payments at the same level for the remainder of the certification period.

(7) Once an eligibility determination is made and a full month's payment and copayment is assessed, benefits will be paid at the same level during the remainder of the certification period so long as the client remains eligible, except that:

(a) The Department may act on reported changes that result in a participation increase or copayment decrease, and

(b) Benefits may be reduced if a child care provider reports a lower monthly charge or the client changes to a different child care provider.

(8) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(10) If a client uses a child care provider at least eight hours in the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month, even if the client changed providers, unless the maximum subsidy payment amount for the month will not be exceeded by paying the second provider and one of the following exceptions also applies:

(a) The initial provider is no longer providing child care, is no longer an approved provider, or has been disqualified by the Department;

(b) The client relocates his or her residence and it is no longer reasonably feasible to continue using the initial provider due to travel time or distance;

(c) There is a substantial change in the days or times of day when child care is needed, such as a change in the timing of the shifts the client is working, that cannot be accommodated by the initial provider; or

(d) The Department determines a change in child care providers is necessary due to an endangerment finding for the child. The Department may, in its discretion, approve payment to a second provider due to an endangerment finding even if the maximum subsidy payment amount would be exceeded.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers, except hourly centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status with Department approval from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider;

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment; or

(l) a provider living in the same home as a non-custodial parent and providing child care for a child of that parent.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all

Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) If a program or provider is not subject to licensing requirements, and the program or provider receives or wishes to receive CCDF funds but has had adverse action taken against it by CCL regarding DWS approval status or health and safety compliance, the program or provider's appeal shall be made to CCL according to CCL's procedures. An appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided during the month and the provider is otherwise in compliance with Department rules and policies. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, registration fees, late fees, field trips, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

(iii) a child is not expected to be in child care the following month;

(iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, registration fees, late fees, field trips, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child has not attended for at least eight hours by the 25th of the month, regardless of whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and

(vi) a change in financial institution account information for direct deposit.

(f) Effective February 1, 2018, between the 25th of each month and the end of the month, a licensed provider shall certify, in a manner specified by the Department, that the licensed provider has reviewed each child's attendance and reported any reportable changes in each child's attendance, including future changes known or expected by the provider.

(10) Providers are required to read and agree to the terms and conditions contained in the Provider Guide annually.

(11) Providers must submit a W-9 Form, Federal Employer Identification Number (EIN) or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department. Failure to submit this information shall result in the

provider being removed from approved provider status.

(12) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level;

(b) clients receiving transitional child care and FEP CC as provided in rule R986-700-708.

R986-700-708. FEP CC Transitional Child Care.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.

(2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week. An exception may be made to the minimum work requirements with Department approval when a parent with a disability is employed at his or her full capacity and provides requested documentation and/or verification.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). An exception may be made to the minimum work requirements with Department approval when both parents are employed at their full capacity and provide requested documentation and/or verification. CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify the incapacity and why the incapacity prohibits them from providing care for their children in the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a

parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the copayment amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the amount the provider reports to the Department as the charge for the child. For example: The provider's monthly charge is $800 per month. The non-applicant parent pays $300 directly to the provider. The provider should report the charge of $500, as that is the portion the applicant parent is responsible to pay. The provider charge of $500 will be used in the benefit calculation when determining the amount of subsidy. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.

(7) Clients must meet the CCDF asset limit.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot

obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not possible.

(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2)(i) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718.

(ii) A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days, or if the provider does not notify the Department by the 25th of the month when the child was not in care at least eight hours that month.

(iii) If the client does not use at least eight hours of child care by the 25th of the month but the child returns after the 25th of the month and attends for at least eight hours total in the month, it may result in a partial overpayment for that month. The partial overpayment may not be assessed if the provider reports by the 25th of the month that a child was not in care during that month or stopped attending care during that month and the child returns after the 25th of the month and attends for at least eight hours total in the month.

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a greater subsidy payment amount than the client was charged for the month of service.

(4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client

is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. Hours of need cannot exceed actual work hours.

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following documenting the child's disability and special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education,

(e) Baby Watch, Early Intervention Program, or

(f) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a licensed Advanced Practice Registered Nurse;

(iii) a licensed Physician's Assistant;

(iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification; Removal From Approved Provider Status.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(3) Effective February 1, 2018, a licensed provider that, in any six-month period, fails three times to timely certify attendance during the monthly certification period as required in rule R986-700-706(9)(f) shall be disqualified.

(4) A CC provider may appeal an overpayment, removal from approved provider status, or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified or removed from approved provider status may not continue to receive CC subsidy funds pending appeal. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider under this subsection will follow the facility, any successor facilities, and the principal(s) of the facility.

(a) A "successor facility" is any facility that acquires the business or acquires substantially all of the assets of a facility that has been disqualified. This includes a facility whose provider changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" include any property, tangible or intangible, which has value. Assets may include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director

or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1) and license-exempt providers and other programs and grantees not subject to CCL requirements.

(2) The following persons must submit to a background check:

(a) The provider;

(b) Each person age 12 years old or older who is living in the household where the child care is provided; and

(c) Each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and any person described in Subsection (2) above has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided;

(c) each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Checks.

(1) The Department will contract with the CCL to perform a criminal background check, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. The provider shall pay all applicable background check fees. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted if required by Subsection (4) below. If the fingerprints are submitted electronically, they must be submitted in conformity with the CCL guidelines regarding electronic submissions. Fingerprints are not required to be submitted if:

(a) The covered individual has previously submitted fingerprints to CCL for a Next Generation national criminal history record check;

(b) The covered individual has resided in Utah continuously since the fingerprints were submitted; and

(c) The covered individual has not permitted his or her background check to lapse or expire since the fingerprints were submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, caregivers who are 16 years old and older, and covered individuals who are 18 years and older are required to submit fingerprints under these rules as requested. In addition, the Department may conduct background checks annually.

(5) If CCL takes an action adverse to any covered individual based upon the background check, CCL will send a denial letter to the provider and the covered individual.

(6) A background check must be submitted for each covered individual:

(a) Prior to the date the person becomes a covered individual, unless:

(1) The person is turning 12 years old and resides in the facility where child care is being provided, in which case the background check form must be submitted and authorized within ten business days of the date the child turns 12 years old;

(2) The person is currently employed by another child care provider within the State and has a current background check; or

(3) The person has been separated from employment from another child care provider within the State for no more than 180 days and has a current background check; and

(b) On an annual basis for each covered individual.

(7) A person may not begin work as a covered individual until the person has completed a fingerprint-based check and the results have been received. After the fingerprint-based check has been completed but prior to full completion of the background check process, a covered individual must be supervised by a person who has fully completed and passed the background check process.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(4) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(5) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

(6)(a) Pursuant to Utah Code Ann. Section 35A-3-310.5(5)(b), the Department's designee for considering and exempting individual cases is the Child Care Licensing Administrator within the Utah Department of Health.

(b) The Department's designee may exempt a covered individual from being excluded from providing child care due to a criminal conviction if the Department's designee determines that the nature of the background check finding or relevant mitigating circumstances indicate the covered individual does not pose a risk to children.

(c) Notwithstanding Subsection (b) above, the Department's designee shall not exempt a covered individual convicted of any of the following:

(i) Any offense specifically not excluded under Subsection (2) above;

(ii) Any "violent felony" as that term is used in Section 76-3-203.5(1)(c) of the Utah Code;

(iii) Any felony against a child, including child pornography;

(iv) Any felony involving abuse or neglect of a spouse, child, or vulnerable adult;

(v) Any felony involving rape or sexual assault;

(vi) Any felony involving kidnapping;

(vii) Any felony involving arson;

(viii) Any felony involving physical assault or battery;

(ix) Any drug-related felony, unless the offense was a non-violent offense and occurred at least ten years prior to the date of the background check; or

(x) Any violent misdemeanor committed as an adult against a child, including offenses involving child abuse, child endangerment, sexual assault, or child pornography.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-

754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-757. Consequences for Failure to Comply; Appeals.

(1) A child care provider that fails to comply with Sections R986-700-751 through -756 will be removed from approved provider status until the provider complies. The child care provider may also be held liable for additional penalties under Section R986-700-718 if the requirements for liability under that section are met.

(2) A child care provider or covered individual may appeal an adverse action related to the background check requirements by following the procedure for appeals set forth in Section R986-700-705(7).

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

R986-700-776. Intergenerational Poverty School Readiness Scholarship Program.

(1) Scholarships are available, as funding permits, for a child who

(a) will be four years of age on or before September 2 of the school year in which the individual intends to participate in a school readiness program;

(b) has not entered kindergarten; and

(c) is experiencing intergenerational poverty, as determined by the Department.

(2) The Department will mail scholarship applications to individuals who the Department has identified as potentially eligible and who live in an area where one or more high quality preschool programs is available. Individuals who do not receive an application from the Department may still apply by contacting the OCC and requesting an application. The Department will notify potential applicants of the due date for filing a completed application.

(3) An applicant may be required to show that transportation to a high quality preschool program is available if the child does not live within a reasonable commuting distance from the high quality preschool.

(4) An applicant may be required to provide verification and supporting documentation if necessary to determine eligibility.

(5) The value of the scholarship will be determined by which program the parent chooses.

(6) Scholarships are transferable however funds cannot be prorated during a given month. So if a child attends one day or more during a given month at one program, and wishes to transfer to a second program at any time during that month, the full scholarship payment will be made to the first program.

(7) Payment will be made directly to the high quality preschool provider. The provider must send the OCC an invoice at the end of the month, or as soon thereafter as feasible, when services were provided.

R986-700-777. Prioritizing Criteria.

If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

R986-700-779. Educational Improvement Opportunities Outside of the Regular School Day Grant Program.

(1) This rule is authorized by Section 53F-5-210, which creates a grant program for out-of-school time programs and instructs the Department to make rules to administer the grant program for private providers, nonprofit providers, and municipalities.

(2) The purpose of this rule is to outline procedures for the Educational Improvement Opportunities Outside of the Regular School Day Grant Program, including the acceptance of grant applications and the awarding of grants.

(3) Terms used in this rule have the definitions given to them in Section 53F-5-210. For purposes of this rule, "private matching funds" as used in Subsection 53F-5-210(7) means funds from a private source that have not been earmarked or pledged as a match for any other purpose. "Private matching funds" specifically excludes the following:

(a) any federal funds, and

(b) parent funds or any other funds, if the practical effect of earmarking or pledging the funds is to pass the cost of the match along to parents.

(4) For each year the Department is authorized to solicit grant applications, the Department shall publish a grant application timeline that includes the start and end dates for application acceptance and anticipated timeframes for grant evaluation, acceptance or rejection, and funding. The Department may disregard any application that does not comply with the grant application timeline.

(5) The Department shall create a grant application consistent with the requirements of Subsections 53F-5-210(4) and (7)(a). Applicants shall apply for grants using the application the Department creates. The Department may disregard incomplete or non-conforming applications.

(6) The Department shall evaluate and accept or reject grant applications in accordance with the criteria set forth in Subsection 53F-5-210(5).

(7) Grant recipients shall execute and comply with a standard grant terms and conditions agreement with the Department as a condition of receiving a grant under this rule.

(8) Grant recipients shall claim grant funds by submitting reimbursement requests in accordance with Department reimbursement procedures.

KEY: child care, grant programs

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