R27. Administrative Services, Fleet Operations.
R27-3. Vehicle Use Standards.
R27-3-1. Authority and Purpose.

(1) This rule is established pursuant to Section 63A-9-401(1)(d), which authorizes the Division of Fleet Operations (DFO) to establish the requirements for the use of state vehicles, including business and personal use practices, and commute standards.

(2) This rule defines the vehicle use standards for state employees while operating a state vehicle.

R27-3-2. Agency Contact.

(1) Each agency, as defined in Subsection 63A-9-101, shall appoint and designate, in writing, a main contact person from within the agency to act as a liaison between the Division of Fleet Operations and the agency.

R27-3-3. Agency Authorization of Drivers.

(1) Agencies authorized to enter information into DFO's fleet information system shall, for each employee, as defined in section 63G-7-102(2), Utah Governmental Immunity Act, to whom the agency has granted the authority to operate a state vehicle, directly enter into DFO's fleet information system, the following information:

(a) Driver's name;

(b) Driver license number;

(c) State that issued the driver license;

(d) Each Risk Management-approved driver training program(s) taken;

(e) Date each driver safety program(s) was completed;

(f) The type vehicle that each safety program is geared towards.

(2) Agencies without authorization to enter information into DFO's fleet information system shall provide the information required in paragraph 1 to DFO for entry into DFO's fleet information system.

(3) For the purposes of this rule, any employee, as defined in section 63G-7-102(2), whose fleet information system record does not have all the information required in paragraph 1 shall be deemed not to have the authority to drive state vehicles and shall not be allowed to drive either a monthly or a daily lease vehicle.

(4) To operate a state vehicle, employees, as defined in section 63G-7-102(2), whose names have been entered into DFO's fleet information system as authorized drivers shall have:

(a) a valid driver license for the type and class of vehicle being operated;

(b) completed the driver safety course required by DFO and the Division of Risk Management for the type or class of vehicle being operated; and

(c) met the age restrictions imposed by DFO and the Division of Risk Management for the type or class of vehicle being operated.

(5) Agencies shall develop and establish procedures to ensure that any individual listed as an authorized driver is not allowed to operate a state vehicle when the individual:

(a) does not have a valid driver license for the type or class of vehicle being operated; or

(b) has not completed all training and/or safety programs required by either DFO or the Division of Risk Management for the type or class of vehicle being operated; or

(c) does not meet the age restrictions imposed by either DFO or the Division of Risk Management for the type or class of vehicle being operated.

(6) A driver license verification check shall be conducted on a regular basis in order to verify the status of the driver license of each employee, as defined in section 63G-7-102(2), whose name appears in the DFO fleet information system as an authorized driver.

(7) In the event that an authorized driver is found not to have a valid driver license, the agency shall be notified, in writing, of the results of the driver license verification check.

(8) Any individual who has been found not to have a valid driver license shall have his or her authority to operate a state vehicle immediately withdrawn.

(9) Any employee, as defined in section 63G-7-102(2), who has been found not to have a valid driver license shall not have the authority to operate a state vehicle reinstated until such time as the individual provides proof that his or her driver license is once again valid.

(10) Authorized drivers shall operate a state vehicle in accordance with the restrictions or limitations imposed upon their respective driver license.

(11) Agencies shall comply with the requirements set forth in Risk Management General Rules, R37-1-8 (3) to R37-1-8 (9).

R27-3-4. Authorized and Unauthorized Use of State Vehicles.

(1) State vehicles shall only be used for official state business.

(2) Except in cases where it is customary to travel out of state in order to perform an employee's regular employment duties and responsibilities, the use of a state vehicle outside the State of Utah shall require the approval of the director of the department that employs the individual.

(3) The use of a state vehicle for travel outside the continental U.S. shall require the approval of the director of the employing department, the director of DFO, and the director of the Division of Risk Management. All approvals must be obtained at least 30 days from the departure date. The employing agency shall, prior to the departure date, provide DFO and the Division of Risk Management with proof that proper automotive insurance has been obtained. The employing agency shall be responsible for any damage to vehicles operated outside the United States regardless of fault.

(4) Unless otherwise authorized, the following are examples of the unauthorized use of a state vehicle:

(a) Transporting family, friends, pets, associates or other persons who are not state employees or are not serving the interests of the state.

(b) Transporting hitchhikers.

(c) Transporting acids, explosives, weapons, ammunition, hazardous materials, and flammable materials. The transport of the above-referenced items or materials is deemed authorized when it is specifically related to employment duties.

(d) Extending the length of time that the state vehicle is in the operator's possession beyond the time needed to complete the official purposes of the trip.

(e) Operating or being in actual physical control of a state vehicle in violation of Subsection 41-6a-502, (Driving under the influence of alcohol, drugs or with specified or unsafe blood alcohol concentration),Subsection 53-3-231, (Person under 21 may not operate a vehicle with detectable alcohol in body), or an ordinance that complies with the requirements of Subsection 41-6a-510, (Local DUI and related ordinances and reckless driving ordinances).

(f) Operating a state vehicle for personal use as defined in R27-1-2(36). Generally, except for approved personal uses set forth in R27-3-5 and when necessary for the performance of employment duties, the use of a state vehicle for activities such as shopping, participating in sporting events, hunting, fishing, or any activity that is not included in the employee's job description, is not authorized.

(g) Using a state vehicle for personal convenience, such as when a personal vehicle is not operational.

(h) Pursuant to the provisions of R27-7-1 et seq., the unauthorized use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-5. Personal Use Standards.

(1) Personal use of state vehicles is not allowed without the direct authorization of the Legislature. The following are circumstances where personal use of state vehicles are approved:

(a) Elected and appointed officials that receive a state vehicle as a part of their respective compensation package, and have been granted personal use privileges by state statute.

(b) Sworn law enforcement officers, as defined in Utah Code 53-13-103, whose agencies have received funding from the legislature for personal use of state vehicles.

(c) In an emergency, a state vehicle may be used as necessary to safeguard the life, health or safety of the driver or passenger.

(2) An employee or representative of the state spending at least one night on approved travel to conduct state business, may use a state vehicle in the general vicinity of the overnight lodging for the following approved activities:

(a) Travel to restaurants and stores for meals, breaks and personal needs;

(b) Travel to grooming, medical, fitness or laundry facilities; and

(c) Travel to and from recreational activities, such as to theaters, parks, or to the home of friends or relatives, provided said employee or representative has received approval for such travel from his or her supervisor.

(d) Pursuant to the provisions of R27-7-1 et seq., the unauthorized personal use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-6. Application for Commute or Take Home Use.

(1) Each petitioning agency shall, for each driver being given commute or take home privileges, annually complete and submit an online take home form from the DFO website. Submitted take home information will generate a new form that must be signed by the employee, direct supervisor of the employee, and the executive director of the agency.

(2) DFO shall enter the approved commute or take home request into the fleet information system and provide an identification number to both the driver and the agency.

(3) All approvals for commute or take home privileges shall expire at the end of the calendar year on which they were issued and DFO shall notify the agency of said expiration. Agencies shall be responsible for submitting any request for annual renewal of commute or take home use privileges.

(4) Commute use is, unless specifically exempted under R27-3-8, infra, considered a taxable fringe benefit as outlined in IRS publication 15-B. All approved commute use drivers will be assessed the IRS imputed daily fringe benefit rate while using a state vehicle for commute use.

(5) For each individual with commute use privileges, the employing agency shall, pursuant to Division of Finance Policy FIACCT 10-01.00, prepare an Employee Reimbursement/Earnings Request Form and enter the amount of the commute fringe benefit into the payroll system on a monthly basis.

R27-3-7. Criteria for Commute or Take Home Privilege Approval.

(1) Commute or Take Home use may be approved when one or more of the following conditions exist:

(a) 24-hour "On-Call." Where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute or take home privilege is not authorized, could endanger a human life or cause significant property damage. Each driver is required to keep a complete list of all call-outs for renewal of the take home privilege the following year. Agencies may use DFO's online forms to track take home mileage.

(b) Virtual office. Where an agency clearly demonstrates that an employee is required to work at home or out of a vehicle, a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state.

(c) When the agency clearly demonstrates that it is more practical for the employee to go directly to an alternate work-site rather than report to a specific office to pick-up a state vehicle.

(d) When a vehicle is provided to appointed or elected government officials who are specifically allowed by law to have an assigned vehicle as part of their compensation package.

(2) The trip log must be created for the first and last trip of the day for all take-home vehicles.

R27-3-8. Exemptions from IRS Imputed Daily Fringe Benefits.

(1) In accordance with IRS publication 15-b, employees with an individual permanently assigned vehicle are exempt from the imputed daily fringe benefit for commute use when the permanently assigned vehicles are either:

(a) Clearly marked police and fire vehicles;

(b) Unmarked vehicles used by law enforcement officers if the use is specifically authorized;

(c) An ambulance or hearse used for its specific purpose;

(d) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 lbs;

(e) Delivery trucks with seating for the driver only, or the driver plus a folding jump seat;

(f) A passenger bus with the capacity of at least 20 passengers used for its specific purpose;

(g) School buses;

(h) Tractors and other special purpose farm vehicles;

(i) A pick up truck with a loaded gross vehicle weight of 14,000 lbs or less, if it has been modified so it is not likely to be used more than minimally for personal purposes.

Example: According to the IRS, a pick up truck qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business or function and meets either of the following requirements:

(i) It is equipped with at least one of the following items:

(a) A hydraulic lift gate;

(b) Permanent tanks or drums;

(c) Permanent sideboards or panels that materially raise the level of the sides of the truck bed;

(d) Other heavy equipment (such as an electronic generator, welder, boom or crane used to tow automobiles or other vehicles).

(ii) It is used primarily to transfer a particular type of load (other than over public highways) in a construction, manufacturing processing, farming, mining, drilling, timbering or other similar operation for which it is specifically modified.

(j) A van with a loaded gross vehicle weight of 14,000 lbs or less, if it has been specifically modified so it is not likely to be used more than minimally for personal purposes.

Example: According to the IRS, a van qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting or other advertising associated with your trade, business and has a seat for the driver only (or the driver and one other person) and either of the following items:

(i) permanent shelving that fills most of the cargo area; or

(ii) An open cargo area and the van always carries merchandise, material or equipment used in your trade, business or function.

(2) Questions relating to the imputed daily taxable fringe benefit for the use of a state vehicle and exemptions thereto should be directed to DFO.

R27-3-9. Enforcement of Commute Use Standards.

(1) Agencies with drivers who have been granted commute or take home privileges shall establish internal policies to enforce the commute use, take home use and personal use standards established in this rule. Agencies shall not adopt policies that are less stringent than the standards established in these rules.

(2) Commute or take home use that is unauthorized shall result in the suspension or revocation of the commute use privilege by the agency. Additional instances of unauthorized commute or take home use may result in the suspension or revocation of the state driving privilege by the agency.

R27-3-10. Use Requirements for Monthly Lease Vehicles.

(1) Agencies that have requested, and received monthly lease options on state vehicles shall:

(a) Ensure that only authorized drivers whose names and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated, shall operate monthly lease vehicles.

(b) Report the correct odometer reading when refueling the vehicle. In the event that an incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(c) Return the vehicle in good repair and in clean condition at the completion of the replacement cycle period or when the vehicle has met the applicable mileage criterion for replacement, reassignment or reallocation.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(d) Return the vehicle unaltered and in conformance with the manufacturer's specifications.

(e) Pay the applicable insurance deductible in the event that monthly lease vehicle in its possession or control is involved in an accident.

(f) Not place advertising or bumper stickers on state vehicles without prior approval of DFO.

(2) The provisions of Rule R27-4 shall govern agencies when requesting a monthly lease.

(3) Under no circumstances shall the total number of occupants in a monthly lease full-size passenger van exceed ten (10) individuals, the maximum number recommended by the Division of Risk Management.

R27-3-11. Use Requirements for Daily Motor Pool Vehicles.

(1) DFO offers state vehicles for use on a daily basis at an approved daily rental rate. Drivers of a state vehicle offered through the daily pool shall:

(a) Be an authorized driver whose name and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated. In the event that any of the information required by R27-3-3(1) has not been entered in DFO's fleet information system, the rental vehicle will not be released.

(b) Read the handouts, provided by DFO, containing information regarding the safe and proper operation of the vehicle being leased.

(c) Verify the condition of, and acknowledge responsibility for the care of, the vehicle prior to rental by filling out the daily motor pool rental form provided by daily rental personnel.

(d) Report the correct odometer reading when refueling the vehicle at authorized refueling sites, and when the vehicle is returned. In the event that incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(e) Return vehicles with a full tank of fuel. Agencies shall be assessed a fee for vehicles that are returned with less than a full tank of fuel.

(f) Return rental vehicles in good repair and in clean condition.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(g) Call to extend the reservation in the event that they need to keep rental vehicles longer than scheduled. Agencies shall be assessed a late fee, in addition to applicable daily rental fees, for vehicles that are not returned on time.

(h) Use their best efforts to return rented vehicles during regular office hours. Agencies may be assessed a late fee equal to one day's rental for vehicles that are not returned on time.

(i) Call the daily pool location, at least one hour before the scheduled pick-up time, to cancel the reservation. Agencies shall be assessed a fee for any unused reservation that has not been canceled.

(j) Not place advertising or bumpers stickers on state vehicles without prior approval from DFO.

(2) The vehicle shall be inspected upon its return. The agency shall either be held responsible for any damages not acknowledged prior to rental, or any applicable insurance deductibles associated with any repairs to the vehicle.

(3) Agencies are responsible for paying all applicable insurance deductibles whenever a vehicle operated by an authorized driver is involved in an accident.

(4) The DFO shall hold items left in daily rental vehicles for ten days. Items not retrieved within the ten-day period shall be turned over to the Surplus Property Office for sale or disposal.

R27-3-12. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria.

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need.

(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted with written approval from an employee's supervisor.

(b) Requests for a seven-passenger van may be granted in the event that the driver is going to be transporting more than three authorized passengers.

(c) Requests for full-size passenger vans may be granted in the event that the driver is going to be transporting more than six authorized passengers. Under no circumstances shall the total number of occupants exceed the maximum number of passengers recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only.

Passengers shall not be transported in cargo area of said vehicles.

(4) Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel or dual- fuel state vehicle. Drivers shall, when practicable, use an alternative fuel when driving a bi-fuel or dual-fuel state vehicle.

R27-3-13. Alcohol and Drugs.

(1) No authorized driver shall operate or be in actual physical control of a State vehicle in violation of subsection 41-6a-502, any ordinance that complies with the requirements of subsection 41-6a-510, or subsection 53-3-231.

(2) Any individual on the list of authorized drivers who is convicted of Driving Under the Influence of alcohol or drugs(DUI), Reckless Driving or any felony in which a motor vehicle is used, either on-duty or off-duty, may have his or her state driving privileges withdrawn, suspended or revoked.

(3) No operator of a state vehicle shall transport alcohol or illegal drugs of any type in a State vehicle unless they are:

(a) Sworn peace officers, as defined in Section 53-13-102, in the process of investigating criminal activities;

(b) Employees of the Alcohol Beverage Control Commission conducting business within the guidelines of their daily operations; or

(c) investigators for the Department of Commerce in the process of enforcing the provisions of section 58-37, Utah Controlled Substances Act.

(4) Except as provided in paragraph 3, above, any individual who uses a state vehicle for the transportation of alcohol or drugs may have his or her state driving privileges withdrawn, suspended or revoked.

R27-3-14. Violations of Motor Vehicle Laws.

(1) Authorized drivers shall obey all motor vehicle laws while operating a state vehicle.

(2) Any authorized driver who, while operating a state vehicle, receives a citation for violating a motor vehicle law shall immediately report the receipt of the citation to their respective supervisor. Failure to report the receipt of a citation may result in the withdrawal, suspension or revocation of State driving privileges.

(3) Any driver who receives a citation for violating a motor vehicle law while operating a state vehicle shall attend an additional Risk Management-approved mandatory defensive driver training program. The failure to attend the additional mandatory defensive driver training program shall result in the loss of state driving privileges.

(4) Any driver who receives a citation for a violation of motor vehicle laws, shall be personally responsible for paying fines associated with any and all citations. The failure to pay fines associated with citations for the violation of motor vehicle laws may result in the loss of state driving privileges.

R27-3-15. Seat Restraint Use.

(1) All operators and passengers in State vehicles shall wear seat belt restraints while in a moving vehicle.

(2) All children being transported in State vehicles shall be placed in proper safety restraints for their age and size as stated in Subsection 41-6a-1803.

R27-3-16. Driver Training.

(1) Any individual shall, prior to the use of a state vehicle, complete all training required by DFO or the Division of Risk Management, including, but not limited to, the defensive driver training program offered through the Division of Risk Management.

(2) Each agency shall coordinate with the Division of Risk Management, specialty training for vehicles known to possess unique safety concerns.

(3) Each agency shall require that all employees who operate a state vehicle, or their own vehicles, on state business as an essential function of the job, or all other employees who operate vehicles as part of the performance of state business, comply with the requirements of Division of Risk Management rule R37-1-8(5).

(4) Agencies shall maintain a list of all employees who have completed the training courses required by DFO, Division of Risk Management and their respective agency.

(5) Employees operating state vehicles must have the correct license required for the vehicle they are operating and any special endorsements required in order to operate specialty vehicles.

R27-3-17. Smoking in State Vehicles.

(1) All state vehicles are designated as "nonsmoking". Agencies shall be assessed fees for any damage incurred as a result of smoking in vehicles.

KEY: state vehicle use
January 25, 2011 63A-9-401(1)(d)
Notice of Continuation November 29, 2010

R27. Administrative Services, Fleet Operations.
R27-4. Vehicle Replacement and Expansion of State Fleet.
R27-4-1. Authority.

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(v), 63A-9-401(1)(d)(ix), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi) 63A-9-401(1)(d)(xii), 63A-9-401(4)(ii), and 63A-9-401(6) which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

(a) All agencies exempted from the DFO replacement program shall provide DFO with a complete list of intended vehicle purchases prior to placing the order with the vendor.

(b) DFO shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates, including but not limited to alternative fuel mandates, and safety concerns are met.

(c) DFO shall assist agencies, including agencies exempted from the DFO replacement program, in their efforts to insure that all vehicles in the possession, control, and/or ownership of agencies are entered into the fleet information system.

(2) Pursuant to Subsection 63J-1-306(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to DFO and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the DFO staff shall, on the basis of input from user agencies, recommend to DFO:

(a) a Standard State Fleet Vehicle (SSFV)

(b) a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the DFO staff, determine and establish, for each fiscal year:

(a) a SSFV

(b) the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet. A standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(3) DFO shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) DFO shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

R27-4-3. Delegation of Division Duties.

(1) Pursuant to the provisions of UCA 63A-9-401(6), the Director of DFO, with the approval of the Executive director of the Department of Administrative Services, may delegate motor vehicle procurement and disposal functions to institutions of higher education by contract or other means authorized by law, provided that:

(a) The funding for the procurement of vehicles that are subject to the agreement comes from funding sources other than state appropriations, or the vehicle is procured through the federal surplus property donation program;

(b) Vehicles procured with funding from sources other than state appropriations, or through the federal surplus property donation program shall be designated "do not replace;" and

(c) In the event that the institution of higher education is unable to designate said vehicles as "do not replace," the institution shall warrant that it shall not use state appropriations to procure their respective replacements without legislative approval.

(2) Agreements made pursuant to Section 63A-9-401(6) shall, at a minimum, contain:

(a) a precise definition of each duty or function that is being allowed to be performed; and

(b) a clear description of the standards to be met in performing each duty or function allowed; and

(c) a provision for periodic administrative audits by either the DFO or the Department of Administrative Services; and

(d) a representation by the institution of higher education that the procurement or disposal of the vehicles that are the subject matter of the agreement shall be coordinated with DFO. The institution of higher education shall, at the request of DFO, provide DFO with a list of all conventional fuel and alternative fuel vehicles it anticipates to procure or dispose of in the coming year. Alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to insure state compliance with federal AFV mandates; and

(e) a representation by the institution of higher education that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with; and

(f) a representation that the agreement is subject to the provisions of UCA 63J-1-306, Internal Service Funds - Governance and review; and

(g) a representation by the institution of higher education that it shall enter into DFO's fleet information system all information that would be otherwise required for vehicles owned, leased, operated or in the possession of the institution of higher education; and

(h) a representation by the institution of higher education that it shall follow state surplus rules, policies and procedures on related parties, conflict of interest, vehicle pricing, retention, sales, and negotiations; and

(i) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) An agreement made pursuant to Section 63A-9-401(7) may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement.

R27-4-4. Vehicle Replacement.

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, DFO shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the Standard State Fleet Vehicle (SSFV) that will be purchased to take the place of each vehicle on the list.

(3) All vehicles replacements will default to a SSFV.

(4) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

(a) Passenger space
(b) Type of items carried
(c) Hauling or towing capacity
(d) Police pursuit capacity
(e) Off-road capacity
(f) 4x4 capacity
(g) Emergency service (police, fire, rescue services) capacity
(h) Attached equipment capacity (snow plows, winches, etc.)
(i) Other justifications as approved by the Director of DFO or the director's designee.

(5) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of a motor vehicle with a SSFV.

(6) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the Director of DFO or the director's designee.

(7) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

(8) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five working days to pick-up the replacement vehicle from DFO, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(9) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure compliance with said AFV mandates.

R27-4-5. Fleet Expansion.

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion or that a vehicle currently designated "do not replace" be placed on a replacement cycle, shall be required to provide proof of the requisite legislative approval and funding for the procurement of an expansion vehicle or the placement of a "do not replace" vehicle on a replacement cycle, and any additional features and miscellaneous equipment, before DFO is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion or placement of a "do not replace" vehicle on a replacement cycle:

(a) A letter, signed by the agency's Chief Financial Officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Prior to the purchase of an expansion motor vehicle, DFO shall provide each agency contact with the Standard State Fleet Vehicle (SSFV) that will be purchased.

(6) All expansion vehicles will default to a SSFV.

(7) Pursuant to Section 63A-9-401(4)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

(a) Passenger space
(b) Type of items carried
(c) Hauling or towing capacity
(d) Police pursuit capacity
(e) Off-road capacity
(f) 4x4 capacity
(g) Emergency service (police, fire, rescue services) capacity
(h) Attached equipment capacity (snow plows, winches, etc.)
(i) Other justifications as approved by the Director of DFO or the director's designee.

(8) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the expansion motor vehicle to be a non-SSFV.

(9) Upon receipt of proof of legislative approval of an expansion from the requesting agency, DFO shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds necessary to procure the expansion vehicle(s) from the requesting agency to DFO. In no event shall DFO purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

(10) In the event that the requesting agency receives legislative approval for placing a "do not replace" vehicle on a replacement cycle, the requesting agency shall, in addition to providing DFO with proof of approval and funding, provide the Division of Finance with funds, for transfer to DFO, equal to the amount of depreciation that DFO would have collected for the number of months between the time that the "do not replace" vehicle was put into service and the time that the requesting agency begins paying the applicable monthly lease rate for the replacement cycle chosen. In no event shall DFO purchase a replacement vehicle for the "do not replace" vehicle if the requesting agency fails to provide funds necessary to cover said depreciation costs.

(11) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

(12) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure in compliance with said AFV mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional feature(s) or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by DFO after reviewing the recommendations of the DFO staff, that results in an increase in vehicle cost shall be

deemed a feature and miscellaneous equipment upgrade. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director, or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to DFO, a feature and/or miscellaneous equipment upgrade rate designed to recover the total cost associated with providing the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with DFO for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make DFO whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by DFO.

R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b); and

(b) a provision that said agency shall indemnify and hold DFO harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control; and

(c) a provision that said agency shall indemnify DFO for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the DFO fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus;

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes; and

(iv) procurement source; and

(v) purchase price of item; and

expected life of item in years; and

(vi) warranty period; and

(vii) serial number;

(viii) initial installation date; and

(ix) current location of item (warehouse, vehicle number); and

(x) anticipated replacement date of item; and

(xi) actual replacement date of item; and

(xii) date item sent to surplus; and SP-1 number.

(e) a provision requiring the agency or institution with permission to install being permitted to install miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect itself from damage to, or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold DFO harmless for any damage to, or loss of miscellaneous equipment installed in state vehicles.

(f) a provision that DFO shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment a Management Information System (MIS) fee to recover these costs.

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

R27-4-8. Vehicle Class Differential Upgrade.

(1) For the purposes of this rule, requests for vehicles other than the SSFV established by DFO after reviewing the recommendations of the DFO staff, that results in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by DFO for that class.

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/2 ton truck replaced with a standard 3/4 ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle class differential upgrades

shall be approved only when:

(a) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrade(s) at the end of the applicable replacement cycle shall pay to DFO, in full, prior to the purchase of the vehicle, a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

(6) Agencies obtaining approval for vehicle class differential upgrade(s) prior to the end of the current vehicle's replacement cycle shall, prior to the purchase of the replacement vehicle, pay to DFO, in full, an amount equal to the difference in cost between the actual replacement vehicle and the planned replacement vehicle plus the amount of depreciation still owed on the vehicle being replaced, less the salvage value of the vehicle being replaced.

R27-4-9. Cost Recovery.

(1) State vehicles shall be assessed a lease fee designed to recover depreciation costs, and overhead costs, including AFV and MIS fees, and where applicable, the variable costs, associated with each vehicle.

(2) Lease rates are calculated by DFO according to vehicle cost, class, the period of time that the vehicle is expected to be in service, the optimum number of miles that the vehicle is expected to accrue over that period, and the type of lease applicable:

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to DFO approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by DFO under the current preventive maintenance and repair services contract.

(iii) DFO shall, upon giving approval for a capital only lease, issue a delegation agreement to each agency.

(b) A full-service lease is designed to recover depreciation and overhead costs, including AFV and MIS fees, as well as all variable costs.

(3) DFO shall review agency motor vehicle utilization on a quarterly basis to identify vehicles in an agency's possession or control that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(4) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet motor vehicles in its possession or control.

(5) In the event that a vehicle is turned in for replacement as a result of reaching the optimum mileage allowed under the applicable replacement cycle mileage schedule, prior to the end of the period of time that the vehicle is expected to be in service, a rate containing a shorter replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(6) In the event that a vehicle is turned in for replacement as scheduled, but is not in compliance with optimum mileage allowed under the applicable replacement cycle, a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(7) DFO shall begin the monthly billing process when the agency receives the vehicle.

(a) Agencies that choose to keep any vehicle on the list of vehicles recommended for replacement after the receipt of the replacement vehicle, pursuant to the terms of a memorandum of understanding between the leasing agencies and DFO that allows the agency to continue to possess or control an already replaced vehicle, shall continue to pay a monthly lease fee on the vehicle until it is turned over to the Surplus Property Program for resale. Vehicles that are kept after the receipt of the replacement vehicle shall be deemed expansion vehicles for vehicle count report purposes.

(b) Agencies that choose to install miscellaneous equipment to the replacement vehicle, in house, shall be charged a monthly lease fee from date of receipt of the replacement vehicle. If DFO performs the installation, the billing process shall not begin until the agency has received the vehicle from DFO.

R27-4-10. Executive Vehicle Replacement.

(1) Executive Vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute.

(a) Each fiscal year DFO shall establish a standard executive vehicle type rate and purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term, or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(2) Executives shall have the option of choosing a vehicle other than the standard executive vehicle based on the standard executive vehicle purchase price.

(a) The alternative vehicle selection should not exceed the standard executive vehicle purchase price parameter guidelines.

(b) In the event that the agency chooses an alternative a vehicle that exceeds the standard vehicle purchase price guidelines, the agency shall pay for the difference in price between the vehicle requested and the standard executive vehicle purchase price.

R27-4-11. Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles.

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the Division of Fleet Operations to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing a future capitalization cost if programs require replacement of the vehicle."

(2) In the event that an agency voluntarily surrenders a vehicle to DFO under the capitalization credit program, the agency shall receive a capital credit equal to: the total depreciation collected by DFO on the vehicle (D), plus the estimated salvage value for the vehicle (S), for use towards the purchase of the replacement vehicle.

(3) Prior to the purchase of the replacement vehicle, the surrendering agency shall pay DFO, an amount equal to the difference between the purchase price of the replacement

vehicle and amount of the capital credit.

(4) DFO shall, in the event that an agency voluntarily surrenders a vehicle to DFO, hold the vehicle allocation open, or maintain the capital credit for the surrendering agency, for a period not to exceed the remainder of the fiscal year within which the surrender took place, plus an additional five fiscal years.

(5) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the period established in R27-4-11(4), above, shall result in the removal of the surrendered vehicle or allotment from the state fleet, the loss of the agency's capital credit, and effect a reduction in state fleet size.

(6) DFO shall not hold vehicle allocations or provide capital credit to an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size; or

(b) is identified as a "do not replace" vehicle in the fleet information system; or

(c) is a state vehicle not purchased by DFO; or

(d) is a seasonal vehicle that has already been replaced.

(7) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the period set forth in R27-4-11(4), above, must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

R27-4-12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.

(1) DFO is responsible for state motor vehicle fleet management, and in the discharge of that responsibility, one of DFO's duties is to insure that the state is able to obtain full utilization of, and the greatest residual value possible for state vehicles.

(2) DFO shall, on a quarterly basis, conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles.

(3) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet vehicles in its possession or control.

(4) In conducting the review, DFO shall collect the following information on each state fleet vehicle:

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

(d) driver and/or program each vehicle is assigned to;

(e) location of the vehicle;

(f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the information gathered by DFO.

(5) Actual vehicle utilization shall be compared to the scheduled mileage requirements contained in the applicable replacement cycle, and used to identify vehicles that may be candidates for reassignment or reallocation, reclassification, or elimination.

(6) In the event that intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, DFO may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement vehicles for vehicles that are chronically out of compliance with applicable replacement cycle mileage requirements to other agencies to ensure that all vehicles in the state fleet are fully utilized.

(7) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review of the reallocation or reassignment made by DFO. However, vehicles that are the subject matter of petitions for review shall remain with the agencies to which they have been reassigned or reallocated until such time as the Executive Director of the Department of Administrative Services or the executive director's designee renders a decision on the matter.

R27-4-13. Disposal of State Vehicles.

(1) State vehicles shall be disposed of in accordance with the requirements of Section 63A-9-801 and Rule R28-1.

KEY: fleet expansion, vehicle replacement

January 25, 2011	**63A-9-401(1)(a)**
Notice of Continuation July 25, 2007	**63A-9-401(1)(d)(v)**
	63A-9-401(1)(d)(ix)
	63A-9-401(1)(d)(x)
	63A-9-401(1)(d)(xi)
	63A-9-401(1)(d)(xii)
	63A-9-401(4)(ii)

R68. Agriculture and Food, Plant Industry.
R68-8. Utah Seed Law.
R68-8-1. Authority.

Promulgated under authority of Sections 4-2-2, 4-16-3 and 4-17-3.

R68-8-2. Noxious Weed Seeds and Weed Seed Restrictions.

It shall be unlawful for any person, firm, or corporation to sell, offer, or expose for sale or distribute in the State of Utah any agricultural, vegetable, flower, tree and shrub seeds, or seeds for sprouting for seeding purposes which:

A. Contain, either in part or in whole, any prohibited noxious weed seeds.

1. "Prohibited" noxious weed seeds are the seeds of any plant determined by Utah Commissioner of Agriculture and Food to be injurious to public health, crops, livestock, land, or other property and which is especially troublesome and difficult to control.

2. Utah prohibited noxious weed seeds are as follows:

TABLE

Bermudagrass (Except in Washington County)	Cynodon dactylon (L.) Pers.
Bindweed (Wild Morning-glory)	Convolvulus spp.
Black henbane	Hyoscyamus niger (L.)
Broad-leaved Peppergrass (Tall Whitetop)	Lepidium latifolium L.
Canada Thistle	Cirsium arvense (L.) Scop.
Dalmation Toadflax	Linaria dalmatica (L.) Miller
Diffuse Knapweed	Centaurea diffusa (Lam.)
Hoary cress	Cardadia spp.
Houndstongue	Cynoglossum officinale (L.)
Dyers Woad	Isatis Tinctoria L.
Oxeye daisy	Chrysanthemum leucanthemum (L.)
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense (L.) Pers.) and Sorghum Almum (Sorghum almum, Parodi).
Poison Hemlock	Conium maculatum (L.)
Leafy Spurge	Euphorbia esula L.
Medusahead	Taeniatherum caput-medusae (L.) Nevski)
Musk Thistle	Carduus nutans L.
Purple Loosestrife	Lythrum salicaria L.
Quackgrass	Agropyron repens (L.) Beauv.
Russian Knapweed	Centaurea repens L.
SaltCedar (Tamarix)	Tamarix ramosissima Ledeb.
Scotch Thistle (Cotton Thistle)	Onopordum acanthium L.
Spotted Knapweed	Centaurea maculosa Lam.
Squarrose Knapweed	Centaurea virgata Lam. Ssp squarrosa Gugle.
St. Johnswort, common	Hypericum perforatum (L.)
Sulfur cinquefoil	potentilla recta L.
Yellow Starthistle	Centaurea solstitialis L.
Yellow toadflax	Linaria vulgaris (Mill.)

B. Contain any restricted weed seeds in excess of allowable amounts:

1. The following weed seeds shall be allowed in all crop seed, but shall be restricted not to exceed a maximum of 27 such seeds per pound, either as a single species or in combination:

TABLE

Dodder	Cuscuta app.
Halogeton	Halogeton glomeratus (M. Bieb.)
Jointed goatgrass	Aegilops cylindrica (Host.)
Poverty Weed	Iva axillaris Pursh.
Wild Oats	Avena fatua L.

2. The following maximum percentage of weed seeds by weight shall be allowed:

a. Two percent (2.0%) of Cheat (Bromus secalinus), Chess (Bromus brizaformis), (B. commutatus), (B. mollis), Japanese Brome (Bromus japonicus) and Downy Brome (Bromus tectorum) either as a single species or in combination in grass seeds.

b. One percent (1.0%) of any weed seeds not listed in 2.a. above in grass, flower, tree and shrub seeds.

c. One half of one percent (0.50%) in all other kinds or types of seeds.

R68-8-3. Special Labeling Provisions.

A. Prepackaged containers must be labeled in accordance with requirements applying to the specific kind(s) of seed in said prepackaged container as provided by Section 4-16-4.

B. Seed weighed from bulk containers, including jars, cans, bins, etc., in the presence of the customer and sold in quantities of five pounds or less will be exempt from the full labeling provisions; provided, that the container from which the seed is taken is fully and properly labeled in accordance with the provisions of the law and regulations thereunder. Labels on such seed containers must be attached thereto and must be kept in a conspicuous place. The name and address of the supplier or vendor must be plainly printed on all lots of seed sold from bulk containers along with the required labeling and name of substance used in treatment, if any. If the seed was treated, the appropriate treatment labeling must be on both the master container from which the seed is weighed and on each receiving container. The vendor must also mark on any receiving container, when requested by the purchaser, any additional labeling information required by the laws and regulations thereunder.

C. If responsibility is accepted therefore, it shall be permissible under the law for the local merchant or distributor of seed in this State to adopt and use the analysis furnished by the original seller to remain attached to the proper container of such seed for a period not to exceed nine calendar months for vegetable, flower, tree, and shrub seeds and eighteen calendar months for agricultural seeds or in the case of hermetically sealed seed, thirty-six calendar months, after which time said local dealer or distributor must retest or have retested any remaining seed in his possession, remove the original analysis label and attach a new analysis label or place an appropriately printed permanently adhering sticker on the original label bearing the lot number, percent of germination and date of test.

D. Any vegetable or flower seeds in packets or containers of one pound or less and preplanted containers offered, exposed for sale, or distributed in the State of Utah, must be labeled with the date of test or the current calendar year for which the seed is packed.

R68-8-4. Treated Seed - Use of Highly Toxic, Moderately Toxic, and Low Toxicity Substances and Labeling of Containers.

Any agricultural, vegetable, flower, or tree and shrub seed or mixture thereof that has been treated, shall be labeled in type no smaller than eight point to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed. The label shall contain the required information in any form that is clearly legible and complies with Section 4-16-5, Federal Laws which apply, and the following paragraphs of this regulation which are subsequently applicable. The information may be on the seed analysis tag, on a separate tag, or printed on each container in a conspicuous manner.

A. Names of Substances.

1. The required name of the substance used in treatment shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are available for use by the public and are commonly recognized as names of particular substances.

2. Examples of commonly accepted chemical (generic) names are: blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly accepted abbreviated chemical names are BHC (1,2,3,4,5,6, Hexachloroclohexane) and DDT (Dichloro diphenyl trichloroethane).

B. Treatment Coloring.

Any substance which is toxic in nature used in the treatment of seed shall be distinctly colored so as to be readily discernible.

C. Labeling.

Containers of treated seed shall, in addition to the name of the treatment substance used be labeled in accordance with Subsection R68-8-4(C), and shall bear appropriate signal words and warning statements required according to the relative toxicity of the chemical(s) applied. In addition, all seed treated with a chemical seed treatment shall bear the statement, "Keep out of Reach of Children."

1. Labeling Seed Treated with Highly Toxic Substances.

a. Seed treated with a chemical substance, designated by the Environmental Protection Agency or the Commissioner as a highly toxic substance, shall be labeled to conspicuously show the words, "TREATED SEED," together with the name of the substance. Example: "THIS SEED TREATED WITH (name of substance)," or "(name of substance) TREATED". The labeling shall also bear in red coloring the signal words, "DANGER-POISON," and a representation of a skull and crossbones at least twice the size of the type used for the name of the substance. The label shall also include in red letters additional precautionary statements stating hazards to humans and other vertebrate animals, special steps or procedures which should be taken to avoid poisoning, and wording to inform physicians of proper treatment for poisoning.

b. All bags, sacks, or other containers of seed which have been or are being used to contain seeds treated with "highly toxic" substances, shall be identified with the words "DANGER POISON," and a representation of a skull and crossbones. The printing shall be directly printed or impregnated on or into the containers, or applied by other means approved by the department, as to be permanent. Any such container in which seed treated with highly toxic substances has been contained, except for future similar use for seed, shall not again be used to contain any food, feed, or agricultural products, without the prior written approval of the department.

2. Labeling Seed Treated with Moderately Toxic Substances.

Seed treated with a chemical substance designated as moderately toxic, shall be labeled with the words, "TREATED SEED," together with the name of the substance. Examples: "THIS SEED TREATED WITH (name of substance)" or "(name of substance) TREATED." The label shall also bear the signal word, "WARNING". Additional precautionary statements describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

3. Labeling Seed Treated with Low Toxicity Substances.

Seed treated with a chemical designated as low toxicity, or comparatively free from danger shall be labeled with the words, "TREATED SEED" together with the name of the substance. Example: "THIS SEED IS TREATED (name of substance)", or "(name of substance) TREATED." The label shall also bear the signal word, "CAUTION". Additional precautionary statements describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

4. Effective Warning.

Any words or terms used on the label which tend to reduce the effectiveness of the warning statements required by section 4-16-5 and this regulation are construed to be misleading.

5. Bulk Seed.

In the case of seed in bulk, the information required on the labels of packaged seed shall appear on the invoice or other records accompanying and pertaining to such seed.

D. Treatment by Custom Applicators.

The provisions of this regulation shall apply to seed which has been treated by custom applicators, or in a custom manner, even though the transfer of ownership is not intended on said seed.

E. Changes in Federal Law.

The kinds of chemicals declared highly toxic, moderately toxic, or low toxicity and their approved uses on seed must of necessity be in conformity with applicable federal laws and regulations. If at any time the federal government prohibits the use of such substances on seed or makes other changes affecting seed then the provisions of this regulation are considered to be modified to the extent necessary to conform to such federal laws and regulations.

R68-8-5. Inoculated Seed.

The term "inoculant" means a commercial preparation containing nitrogen-fixing bacteria applied to seed. Seed claimed to be inoculated shall be labeled to show the month and year beyond which the inoculant on the seed is no longer claimed to be effective.

R68-8-6. Weight or Seed Count Requirements.

Net weight on all containers is required except that preplanted containers, mats, tapes, or other planting devices shall state the minimum number of seeds in the container. All weight labeling shall be consistent with the requirements of the Weights and Measures Law and rules. Under appropriate circumstances when a seed tag is used, the weight information may appear on the seed tag rather than on the seed bag. The term "weight" shall be understood and construed to mean the net weight of the commodity.

R68-8-7. Labeling of Agricultural Seed Varieties.

A. The following kinds of agricultural seeds shall be labeled to show the variety name or the words, "Variety Not Stated."

Alfalfa
Bahiagrass
Beans, field
Beets, field
Brome, smooth
Broomcorn
Clover, crimson
Clover, red
Clover, white
Corn, field
Corn, pop
Cotton
Cowpea
Crambe
Fescue, tall
Flax
Lespedeza, striate
Millet, foxtail
Millet, pearl
Oat

Pea, field
Peanut
Rice
Rye
Safflower
Sorghum
Sorghum-Sudangrass
Sudangrass hybrid
Soybean
Sudangrass
Sunflower
Tobacco
Trefoil, birdsfoot

B. The following kinds of agriculture seeds shall be labeled to show the variety name:

Barley
Triticale
Wheat, Common
Wheat, durum

C. When two or more varieties are present in excess of five percent and are named on the label, the name of each variety shall be accompanied by the percentage of each.

R68-8-8. Labeling of Lawn Seed Mixtures.

A. Format. When labeling lawn and turf seed mixtures as provided by Section 4-16-4, the following format shall be used:

TABLE

Grass Seed Mixture	
Lot 77-7	
PURE SEED	GERMINATION
42.20% Kentucky Bluegrass	80%
28.37% Annual Ryegrass	85%
11.90% Creeping Red Fescue	85%
5.43% White Dutch Clover	75%
HARD SEED	10%
.50% Weed Seed Tested: July 1979	
1.60% Other crop seed	
10.00% Inert matter	
Noxious weed seed-none	
John Doe Seed Company, Inc.	
1977 Bell Street, Salt Lake City, Utah 84000	
Net Weight: 5 pounds	

B. Agricultural seed other than seed required to be named on the label shall be designated as "other crop seed" or "crop seed." If a mixture contains no crop seed, the statement "contains no other crop seed," may be used.

C. The headings "pure seed" and "germination" or "germ," shall be used in the proper place.

D. The word "mixed" or "mixture" shall be stated with the name of the mixture.

R68-8-9. Vegetable Seeds and Minimum Germination Standards.

A. Vegetable seeds are the seeds of the following, and the minimum germination standards are as indicated:

TABLE

KIND	MINIMUM PERCENT GERMINATION STANDARD
Artichoke--Cynara scolymus	60
Asparagus--Asparagus officinalis	70*
Bean, garden--Phaseolus vulgaris	70*
Bean, asparagus--Vigna sequipedalis	75*
Bean, lima--Phaseolus lunatus var. macrocarpus	70*
Bean, runner--Phaseolus coccineus	75
Beet--Beta vulgaris	65
Broadbean--Vicia fava	75
Broccoli--Brassica oleracea var. botrytis	75
Brussels sprouts--Brassica oleracea var. gemmifera	70
Burdock, great--Arctium lappa	60
Cabbage--Brassica oleracca var. capitata	75
Cabbage, Chinese--Brassica Pekinensis	75
Cabbage, tronchuda--Brassica oleracea var. tronchuda	75
Cantalope (see Muskmelon)	
Cardoon--Cynara cardunculus	60
Carrot--Daucus carota	55
Cauliflower--Brassica oleracea var. botrytis	75
Celery and celeriac--Apium graveolens var. dulce and repaceum	55
Chard, Swiss--Beta vulgaris var. cicla	65
Chicory--Cichorium intybus	65
Chives--Allium schoenoprasum	50
Citron--Citrullus lanatus var. citroides	65
Collards--Brassica oleracea var. acephala	80
Corn, Sweet--Zea mays	75
Cornsalad (Fetticus--Valerianella locusta)	70
Cowpea--Vigna sinensis	75
Cress, garden--lepidium sativum	75
Cress, Upland--Barbarea verna	60
Cress, Water--Rorippa nasturtium-acquaticum	40
Cucumber--Cucumis sativus	80
Dandelion--Taraxacum officinals	60
Eggplant--Solanum melongena	60
Endive--Cichorium endivia	70
Herbs--(all kinds and varieties not listed)	50
Kale--Brassica spp.	75
Kohlrabi--Brassica oleracea var. gongylodes	75
Leek--Allium porrum	60
Lettuce--Lactuca sative	80
Muskmelon (Cantalope)--Cucumis melo	75
Mustard, India--Brassica juncea	75
Mustard, spinach--Brassica perviridis	75
Okra--Hibiscus esculentus	50
Onion--Allium cepa	70
Onion, Welsh--Allium fistulosum	70
Pak-choi--Brassica chinensis	75
Parsley--Petroselinum crispum	60
Parsnip--Pastinaca sativa	60
Pea, garden--Pisum sativum	80*
Pepper--Capsicum spp.	55
Pumpkin--Cacurbita pepo	75
Radish--Raphanus sativus	75
Rhubard--Rheum rhaponticum	60
Rutabaga--Brassica napus var. napobrassica	75
Salsify--Tragapogon porrifolius	75
Sorrel--Rumex spp	65
Soybean--Glycine max. L.	75
Spinach--Spinacia oleracea	60
Spinach, New Zealand--Tetragonia expansa	40
Squash--Cucurbita pepo	75
Tomato--Lycopersicon esculentum	75
Tomato, husk--Physalis spp	50
Turnip--Brassica rapa	80
Watermelon--Citrullus vulgaris	70

*Including hard seeds

R68-8-10. Flower Seeds and Minimum Germination Standards.

The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination labeling provisions of Section 4-16-4. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, this percentage is the total percentage of germination and percentage of hard seed.

TABLE

KIND	MINIMUM GERMINATION STANDARDS
Archillea (The Pearl)--Achillea ptarmica	50
African daisy--Dimorphotheca aurantiaca	55
African Violet--Saintpaulia SPP	30
Ageratum--Ageratum mexicanum	60
Agrostemma (rose campion)--Agrostemma	65

coronaria	
Alyssum-Alyssum compactum, A. maritimum, A. procumbens, A. saxatile	60
Amaranthus--Amaranthus spp.	65
Anagalis (pimpernel)--Anagalis arvensis, Anagalis coerulea, Anagalis grandiflora	60
Anemone--Anemone coronaria, A. pulsatilla	55
Angel's trumpet--Datura arborea	60
Arabis--Arabis alpina	60
Arctotis (African lilac daisy)--	
Arctotis grandis	45
Armeria--Armeria formosa	55
Asparagus, fern--Asparagus plumosus	50
Asparagus, sprenger--Asparagus sprengeri	55
Aster, China--Callistephus chinensis, except Pompom, Powderpuff and Princess types	55
Aster, China--Callistephus chinensis, Pompom, Powderpuff and Princess types.	50
Aubrietia--Aubrietia deltoides	45
Baby Smilax--Asparagus asparagoides	25
Balsam--Impatiens balsamina	70
Begonia--(Begonia fibrous rooted)	60
Begonia--(Begonia tuberous rooted)	50
Bells of Ireland--Molucella laevis	60
Brachycome (swan river daisy)--	
Brachycome iberidifolia	60
Browallia--Browallia elata and B speciosa	65
Buphthalmum (willowleaf oxeye)--	
Buphthalmum salicifolium	60
Calceolaria--Calceolaria spp	60
Calendula--Calendula officinalis	65
California Poppy--Eschscholtzia california	60
Calliopsis--Coreopsis bicolor, C. drummondi, C. elegans	65
Campanula:	60
Cantebury bells--Campanula medium	60
Cup and Saucer bellflower--Campanula calycanthema	60
Carpathian bellflower--Campanula carpatica	50
Peach bellflower--Campanula persicifolia	50
Candytuft, annual--Iberis amara, I. umbellata	65
Candytuft, perennial--Iberis gibraltarica I. sempervirens	55
Caster bean--Richinus communis	60
Cathedral bells--Cobaea scandens	65
Celosis--Celosia argentea	65
Centaurea: Basketflower--Centaurea americana, Cornflower-C. cyanus, Dusty Miller--C. candidissima, Royal centaurea C. imperialis, Sweet Sultan--C. moschata, Velvet centaurea C. gymnocarpa	60
Cerastium (snow in summer)--Cerastium biebersteini and C. tomentosum	65
Chinese forget-me-not--Cynoglossum amabile	55
Chrysanthemum, annual--Chrysanthemum carinatum, C. coronarium, C. segetum	40
Cineraria--Senecio cruentus	60
Clarkia--Clarkia elegans	65
Cleome--Cleome gigantea	65
Coleus--Coleus blumei	65
Columbine--Aquilegia spp	50
Coral Bells--Heuchera sanquinea	55
Coreopsis, perennial--Coreopsis lanceolata	40
Corn, Ornamental--Zea Mays	75
Cosmos: Sensation, Mammoth and Crested type--Cosmos bipinnatus; Klondyke type-C. sulphureus	65
Crossandra--Crossandra infundibuliformis	50
Dahlia--Dahlia spp	55
Daylily--Hemerocallis spp.	45
Delphinium, perennial; Belladonna and Bellamosum types: Cardinal larkspur--Delphinium cardinale; Chinesis types; Pacific Giant, Gold Medal and other hybrids of D. elatum	55
Dianthus:	
Carnation--Dianthus caryophyllus	60
China pinks--Dianthus chinensis, Heddewigi, Heddensis	70
Grass pinks--Dianthus plumarius	60
Maiden pinks--Dianthus deltoides	60
Sweet William--Dianthus barbatus	70
Sweet Wivelsfield--Dianthus allwoodi	60
Didiscus (blue lace flower)--Didiscus coerulea	65
Doronicum (leopard's bane)--Doronicum caucasicum	60
Dracena--Cracena indivisa	55
Dragon Tree--Dracaena Draco	40
English daisy--Bellis perennis	55
Flax, Golden--Linum flavum, Flowering flax L. grandiflorum, perennial flax L. perenne	60
Flowering Maple--Abutilon spp.	35
Foxglove--Digitalis spp	60
Gaillardia, annual--Gallardia pulchella, G. picta; perennial G. grandiflora	45
Gerbera (transvaal daisy)--Gerbera jamesoni	60
Geum--Geum spp	65
Gilia--Gilia spp	65
Gloriosa daisy (rudbeckia) Echinacea purpurea and Rudbeckia hirta	60
Gloxinia--Sinningia speciosa	40
Godetia--Godetia amonea, G. grandiflora	65
Gourds: Yellow flowered--Cucurbita pepo; White flowered Lagenaria sisceraria; Dishcloth-Luffa cylindrica	70
Gypsophila, annual Baby's breath--Gypsophila elegans; perennial Baby's breath-G. paniculata, G. pacifica, G. repens	70
Helenium--Helenium autummale	40
Helichrysum--Helichrysum monstrosum	60
Heliopsis--Heliopsis scabra	55
Heliotrope--Heliotropium spp	35
Helipeterum (Acroclinum)--Helipeterum roseum	60
Hesperis (sweet rocket)--Hesperis matronalis	65
Hollyhock--Althea rosea	65*
Hunnemannia (Mexican tulip poppy)--Hunnemannia fumariaefolia	60
Hyacinth bean--Dolichos loblab	70*
Impatiens--Impatiens holstii, I. sultani	55
Ipomea: Cypress vine--Ipomea quamoclit; Moonflower-I. noctiflora; Morning glories, Cardinal climber, Hearts and Honey vine--Ipomea spp	75*
Jerusalem cross (Maltese cross)--Lychnis chalcedonica	70
Job's tears--Ciox lacryma-jobi	70
Kochia (Mexican fire bush)--Kochia childsii	55
Larkspur, annual--Delphinium ajacia	60
Lantana--Lantana camara, L. hybrida	35
Lilium (regal lily)--Lilium regale	50
Linaria--Linaria spp	65
Lobelia--Lobelia erinus	65
Lunaria, honesty--Lunaria annua	65
Lupine--Lupinus spp	65*
Marigold--Tagetes spp	65
Marvel of Peru (Four-O'clock)--Mirabilis jalapa	60
Matricaria (feverfew)--Matricaria spp	60
Migonette--Reseda odorata	55
Myosotis--Myosotis alpestris, M. oblongata, M. pulastris	50
Nasturtium--Tropeaolum spp	60
Nemesia--Nemesia spp	65
Nemophila--Nemophila insignis	70
Nemophila, spotted--Nemophila maculata	60
Nicotiana--Nicotiana affinis, N. sanderae, N. sylvestris	65
Nierembergia--Nierembergia spp	55
Nigella--Nigella damascena	55
Pansy--Viola tricolor	60
Penstemon--Penstemon barbatus, P. grandiflorus, P. laevigatus, P. pupescens	60
Petunia--Petunia spp	45
Phacelia--Phacelia campanularia, P. minor, P. tanacetifolia	65
Phlox, annual--Phlox drummondii all types and varieties	55
Physalis--Physalis spp	60
Plantycodon (balloon flower)--Platycodon grandiflorum	60

Plumbago, cape--Plumbago capensis	50
Ponytail--Beaucarnea Recurvata	40
Poppy: Shirley poppy--Papaver rhoeas, Iceland poppy P. nudicaule, Oriental poppy-P. orientale, Tulip poppy P. glaucum	60
Portulaca--Portulaca grandiflora	65
Primula (primrose)--Primula spp	50
Pyrethrum (painted daisy)--Pyrethrum coccineum	60
Salpiglossis--Salpigloss's gloxinaeflora, S. sinuata	60
Salvia--Scarlet Sage--Salvia spendens, Mealycup Sage (blue bedder)--Salvia farinacea	50
Saponaria--Saponaria ocymoides, S. vaccaria	60
Scabiosa, annual--Scabiosa atropurpurea	50
Scabiosa, perennial--Scabiosa caucasica	40
Scizanthus--Schizanthus spp	60
Sensitive plant (mimosa)--Mimosa pudica	65*
Shasta Daisy-Chrysanthemum maximum, C. leucanthemum	65
Silk Oak--Grevillea Robusta	25
Snapdragon--Antirrhinum spp	55
Solanum--Solanum spp	60
Statice--Statice sinuata S. suworowii (flower heads)	50
Stocks: Common--Matthiola incana, Evening Scented-Matthiola bicornis	65
Sunflower--Helianthus spp	65
Sunrose--Helianthemum spp	30
Sweet pea, annual and perennial other than dwarf bush-Lathyrus odoratus, L. latifolius	75*
Sweet pea, dwarf bush--Lathyrus odoratus	65*
Tahoka daisy--Machacanthera tanacetifolia	60
Thunbergia--Thunbergia alata	60
Torch flower--Tithonia speciosa	70
Torenia (wishbone flower)--Torenia fournieri	70
Tritoma--Kniphofia spp	65
Verbena, annual--Verbena hybrida	35
Vinca (periwinkle)--Vinca rosea	60
Viola--Viola carnuta	55
Virginian stocks--Malcolmia maritima	65
Wallflower--Cheiranthus allioni, C. cheiri	65
Yucca (Adamsneedle)--Yucca filamentosa	50
Zinnia (except linearis and creeping)--	
Zinnia augustifolia, Z. elegans, Z. grandifloria, Z. gracillima, Z. haageana, Z. multiflora, Z. pumila	65
Zinnia, linearis and creeping-- Zinnia linearis, Sanvitalia procumbens	50
All other kinds	50

* Including hard seeds

R68-8-11. Labeling of Flower Seeds.

Flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by Section 4-16-4.

A. Seeds of Plants Grown Primarily for Their Blooms.

1. Single Name. Seeds of a single name variety shall be labeled to show the kind and variety name. For example: "Marigold, Butterball."

2. Single Type and Color. Seeds of a single type and color for which there is no special variety name shall be labeled to show either the type of plant or the type of color of bloom. For example: "Scabiosa, Tall, Large Flowered, Double, Pink."

3. Assortment of Colors. Seeds consisting of an assortment of mixture of colors or varieties of a single kind shall be labeled to show the kind name, the type of plant, and the types of bloom. In addition, it shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is-"Marigold, Dwarf, Double French, Mixed colors."

4. Assortment of Kinds. Seeds consisting of an assortment of mixture of kinds shall be labeled to clearly indicate that the seed is assorted or mixed and the specific use of the assortment of mixture shall be indicated. For example: "Cut Flower Mixture," or "Rock Garden Mixture." Such statements as "Wild Flower Mixture," "General Purpose Mixture," "Wonder Mixture," or any other statement which fails to indicate the specific use of the seed shall not meet the requirements of this provision unless the specific use of the mixture is also stated.

B. Seeds of Plants Grown for Ornamental Purposes Other Than Their Blooms. Seeds of plants grown for ornamental purposes other than their blooms shall be labeled to show the kind and variety, or the kind together with a descriptive statement concerning the ornamental part of the plant. For example: "Ornamental Gourds, Small Fruited, Mixed."

R68-8-12. Application of Germination Standards to Mixtures of Kinds of Flower Seeds.

A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting 25 % or more of the mixture by number is below standard for the kind or kinds.

R68-8-13. Tree and Shrub Seed Labeling.

The information in the following example shall be used for all tree and shrub seeds for which standard testing procedures are prescribed.

TABLE

Common Name:		Lot#:
Genus:		Species:
Origin: State:	County:	Elevation:
Date Collected or Tested:	Month:	Year:
Pure Seed: %	Weed Seed: %	Inert Matter:
Other crop seed:	% Germination: %	Hard Seed:
Net Weight:		
Name:		
Address:		

If the kind of seed to be labeled is not one for which standard testing procedures are prescribed, the information on germination and hard seeds may be omitted from the example shown above.

R68-8-14. Hermetically Sealed Seed Containers.

The 36-month provision on the date of test in Section 4-16-5 will apply to hermetically sealed agricultural and vegetable seed when the following conditions have been met:

A. The seed was packaged within nine months after harvest.

B. The container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100 degrees F. with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured by the standards adopted by the U. S. Bureau of Standards as: WVP=gm H_2O/24 hr./100 sq. in./100 degrees F./90% RHV. 0%RH

C. The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below:

TABLE

1. AGRICULTURAL SEEDS	PERCENT
Beet, field	7.5
Beet, sugar	7.5
Bluegrass, Kentucky	6.0
Clover, Crimson	8.0
Fescue, Red	8.0
Ryegrass perennial	8.0
All other agricultural seed	6.0
Mixtures of above	8.0

2. VEGETABLE SEEDS	PERCENT
Bean, garden	7.0
Bean, lima	7.0
Beet	7.5

Broccoli	5.0
Brussel sprouts	5.0
Cabbage	5.0
Carrots	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chinese cabbage	5.0
Chives	6.5
Collards	5.0
Corn, sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0
Kohlrabi	5.0
Leek	6.5
Lettuce	5.5
Muskmelon	6.0
Mustard, India	5.0
Onion	6.5
Onion, Welsh	6.5
Parsley	6.0
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All other vegetable seed	6.0

D. The container is conspicuously labeled in not less than eight point type to indicate:

1. That the container is hermetically sealed.

2. That the seed has been preconditioned as to moisture content, and

3. The calendar month and year in which the germination test was completed.

E. The percentage of germination of the vegetable seed at the time of packaging was equal to or above the standards specified in Section R68-8-9.

R68-8-15. Rules for Seed Testing.

Rules for testing seeds shall be the same as those found in the current "Rules For Testing Seeds" recommended by the Association of Official Seed Analysts. For seeds not listed in the "Rules for Testing Seed," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. For seed not listed in the "Rules for Testing Seeds," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. Utah Department of Agriculture and Food has a copy of the "Rules for Testing Seeds", on file in the Seed Laboratory.

R68-8-16. Labeling of Chemical Tests for Viability (Tetrazolium).

The results of tetrazolium tests performed in accordance with the current "Rules For Testing Seeds" of the Association of Official Seed Analysts shall be recognized for labeling purposes.

R68-8-17. Labeling of Seed Distributed to Wholesalers.

A wholesaler, whose predominant business is to supply seed to other distributors rather than to consumers, shall label seed as follows:

A. Containers. If the seed is in containers, the information required in Section 4-16-4 need not be shown on each container provided, that:

1. The lot designation is shown on an attached label or by stenciling or printing on container.

2. The required information for labeling accompanies such shipment.

B. Bulk. In the case of seed in bulk, the information required in Section 4-16-4 shall appear in the invoice or other records accompanying and pertaining to such seed.

R68-8-18. Inspector's Duties.

It shall be the duty of the District Agricultural Inspectors, either in person or by deputy, to quarantine any lots of seed which contain weed seeds in violation of current regulations of the Department of Agriculture and Food. Such seed may be recleaned under the supervision of any official representative of the Utah State Department of Agriculture and Food, and if found to meet the requirements of the current regulations of the Department of Agriculture and Food with respect to weed seed content, the same may be released for distribution, otherwise, such seed will be destroyed. It shall be the duty of the District Agricultural Inspectors, either in person or by deputy, to quarantine any lots of seed which do not comply with the labeling provisions of Section 4-16-4, and Section R68-8. Such seeds shall remain quarantined and shall not be offered for sale until they are properly labeled to meet the above requirements.

R68-8-19. Sampling.

A. General Procedure

1. In order to secure a representative sample, equal portions shall be taken from evenly distributed parts of the quantity of seed or screenings to be sampled. Access shall be had to all parts of that quantity.

2. For free-flowing seed in bags or bulk, a probe or trier shall be used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag shall be used.

3. Non-free-flowing seed, such as certain grass seed, uncleaned seed, or screenings which are difficult to sample with a probe or trier, shall be sampled by thrusting the hand into the bulk and withdrawing representative portions.

4. The portions shall be combined into a composite sample or samples.

5. As the seed or screening is sampled, each portion shall be examined and whenever there appears to be lack of uniformity, additional samples shall be taken to show such lack of uniformity as may exist.

B. Bulk. Bulk seeds or screenings shall be sampled by inserting a probe or thrusting the hand into the bulk, as circumstances require, to obtain a composite sample of at least as many cores or handfuls of seed or screenings as if the same quantity were in bags of an ordinary size. The cores or handfuls of seed which comprise the composite sample shall be taken from well distributed points throughout the bulk.

C. Bags.

1. In quantities of six bags or less, each bag shall be sampled.

2. In quantities of more than six bags, five bags plus at least 10% of the number of bags in the lot shall be sampled, rounding numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than thirty bags. Example:

TABLE

No. Bags in Lot	7	10	23	50	100	200	300	400
No. Bags to Sample	6	6	7	10	15	25	30	30

3. Samples shall be drawn from unopened bags except under circumstances where the identity of the seed has been preserved.

D. Small Containers. Seed in small containers shall be sampled by taking the entire unopened containers in sufficient number to supply a minimum size sample as required in Subsection R68-8-19(E). The contents of a single container or the combined contents of multiple containers of the same lot

shall be considered representative of the entire lot of seed sampled.

E. Size of Samples. The following are minimum weights of samples of seed to be submitted for analysis, test, or examination:

1. Grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these - two ounces (approximately 55 grams).

2. Alfalfa, bromegrasses, crimson or red clover, flax, lespedezas, millet, rape, ryegrass or seeds of similar size - five ounces (approximately 150 grams).

3. Proso, sudangrass, or seeds of similar size - one pound. (Approximately 500 grams).

4. Cereals, sorghums, vetches or seeds of similar or larger size - two pounds (approximately 1000 grams).

5. Vegetable and flower seed - at least 400 seeds per sample.

6. Tree and shrub seed - at least 600 seeds per sample for germination purposes. If a purity or noxious-weed seed examination is required, the amount of sample shall be at least the size of that required for seeds of similar size in Subsections R68-8-19(E)(1), (2), (3), and (4).

7. Screenings - two quarts.

R68-8-20. Records.

The term "Complete Records," as it pertains to Section 4-16-11, shall be construed to mean information which relates to origin, germination, purity, variety, and treatment of each lot of seed transported or delivered for transportation within this State. Such information shall include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, handling, storage, analysis, tests, and examinations. The complete record kept by each person for each lot of seed consists of the information pertaining to his own transactions and the information received from others pertaining to their transactions with respect to each lot of seed.

R68-8-21. Advertising.

The name of a kind or kind and variety of seed and any descriptive terms pertaining thereto shall be correctly represented in any advertisement of seed.

A. Name of Kind or Kind and Variety. The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confirmed to the name of the kind or kind and variety determined in accordance with Section 4-16-2 associated with words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind and variety names; provided, that the descriptive terms or firm names are a part of the kind or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seed Simpson, and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of "Hybrid" in Section 4-16-2.

B. Characteristics of Kind or Variety. Terms descriptive as to color, shape, size, habit of growth, disease resistance, or other characteristics of the kind or variety, may be associated with the name of the kind or variety; provided, that it is done in a manner which clearly indicates the descriptive term is not part of the name of the kind or variety; for example, Oshkosh pepper (yellow) Copenhagen Market (round head) cabbage, and Kentucky Wonder pole bean.

C. Description of Quality and Origin. Terms descriptive of quality or origin and terms descriptive of the basis for representations made may be associated with the name of the kind or variety of seed; provided, that the terms are clearly identified as being other than part of the name of the kind or variety; for example: Blue Tag Gem Barley, Idaho Origin Alfalfa, and Grower's Affidavit of Variety Atlas Sorghum.

D. Description of Manner of Production or Processing. Terms descriptive of the manner or method of production or processing the seed may be associated with the name of the kind or variety of seed, providing such terms are not misleading.

E. Separation of Brand Names from Kind and Variety Names. Brand names and terms taken from trademarks may be associated with the name of the kind and variety or mixtures of kinds or blends of varieties of seed as an indication of source; provided, that the terms are clearly indicated as being other than part of the name of the kind and variety, mixture or blend. For example: Valley Brand Blend 15 Alfalfa, or River Brand Golden Cross Corn.

R68-8-22. Seed Screenings.

It shall be unlawful for any person, company, or corporation to sell, offer for sale, barter, give away, or otherwise dispose of any screenings containing more than 6 whole prohibited noxious weed seeds per pound and/or more than 27 whole restricted weed seeds per pound; except that screenings containing such seeds may be moved or sold to a mill or plant for processing in such a manner which will reduce the number of whole weed seeds to within the above stated tolerances. Each container or shipment of screenings shall be labeled with the words "Screenings for Processing - Not For Seeding or Feeding" and with the name and address of the consignor and consignee.

R68-8-23. Fees For Testing Services.

Charges for testing samples, representing seed sold or offered for sale in Utah, or other services performed by the state seed laboratory, shall be determined by the department pursuant to Subsection 4-2-2(2). A current listing of approved fees may be obtained upon request from Utah State Department of Agriculture and Food.

KEY: inspections

July 2, 2008	**4-2-2**
Notice of Continuation January 5, 2011	**4-16-3**
	4-17-3

R70. Agriculture and Food, Regulatory Services.
R70-410. Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes.
R70-410-1. Authority.

A. Promulgated under authority of Section 4-4-2.

B. Adopt by reference: The Utah Department of Agriculture and Food hereby adopts and incorporates by reference the applicable provisions of the regulations issued by the United States Department of Agriculture for grading and inspection of shell eggs and the Standards, 7 CFR Part 56, January 1, 2005 edition, 21 CFR, 1 through 200, April 1, 2003 edition; 9 CFR 590, January 1, 2005 edition; and 7 CFR 59, January 1, 2005 edition.

R70-410-2. Handling and Disposition of Restricted Eggs.

Restricted eggs shall be disposed of by one of the following methods at point and time of segregation:

A. Checks and dirties must be shipped to an official egg breaking plant for further processing to egg products. Dirties may be shipped to a shell egg plant for cleaning. Checks and dirties may not be sold to restaurants, bakeries and food manufacturers, not to consumers, unless such sales are specifically exempted by Section 15 of the Federal Egg Products Inspection Act and not prohibited by State Law.

B. Leakers, loss and inedible eggs must be destroyed for human food purposes at the grading station or point of segregation by one of the methods listed below:

1. Discarded and intermingled with refuse such as shells, papers, trash, etc.

2. Processed into an industrial product or animal food at the grading station.

3. Denatured or decharacterized with an approved denaturant. (Such product shipped under government supervision and received under government supervision at a plant making industrial products or animal food need not be denatured or decharacterized prior to shipment.)

4. Leakers, loss and inedible eggs may be shipped in shell form provided they are properly labeled and denatured by adding FD and C color to the shell or by applying a substance that will penetrate the shell and decharacterize the egg meat.

C. Incubator rejects (eggs which have been subjected to incubation) may not be moved in shell form and must be crushed and denatured or decharacterized at point and time of removal from incubation.

D. Blood type loss which has not diffused into the albumen may be moved to an official egg products plant in shell form without adding FD and C color to the shell provided they are properly labeled and moved directly to the egg products plant.

E. Containers used for eggs not intended for human consumption must be labeled with the word "inedible" on the outside of the container.

F. Other methods of disposition may be used only when approved by the Commissioner.

R70-410-3. Packaging.

A. It is unlawful for anyone to pack eggs into a master container which does not bear all required labeling, including responsible party, or to transport or sell eggs in such container.

B. Any person who, without prior authorization, acquires possession of a master container which bears a brand belonging to someone else shall, at his own expense, return such container to the registered owner within 30 days.

KEY: food inspections
March 20, 2006 **4-4-2**
Notice of Continuation January 24, 2011

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

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

R156-3a-102. Definitions.

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

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

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

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

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

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

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6) which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsection 58-3a-603(1) or Subsection 58-22-603(1);

(d) is work that affects not greater than 49 occupants as determined in Section 1004 of the 2009 International Building Code;

(e) is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in Section 1604.5 of the 2009 International Building Code.

(7) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(2) means a NCARB approved training program.

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

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

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

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the Intern Development Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any state, district, territory of the United States, or any foreign country who issues licenses for architects, and whose licensure requirements include:

(a) a bachelors or post graduate degree in architecture or equivalent education as set forth in Subsection R156-3a-301(2);

(b) a program of diversified practical experience as set forth in Subsection R156-3a-102(10), or an equivalent training program; and

(c) passing the ARE or passing a professional architecture examination that is equivalent to the ARE.

(12) "Responsible charge" as used in Subsections 58-3a-102(7), 58-3a-302(2)(d)(iv) and 58-3a-304(6) means direct control and management by a principal over the practice of architecture by an organization.

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

(14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-3a-502.

R156-3a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 3a.

R156-3a-104. Organization - Relationship to Rule R156-1.

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

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

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

(a) a State IDP Coordinator;

(b) an Education Coordinator; or

(c) an Intern IDP Coordinator.

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

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

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

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

(c) encourage firms to support IDP;

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

(e) report to the board as directed.

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

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

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

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

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

(b) a current NCARB Council Record;

(c)(i) if an applicant was previously licensed and practicing in Utah under a license that was granted under prior

statute or rule but allowed the license to lapse for more than two years, the applicant may reinstate the license by demonstrating that their combined education, supervised experience and licensed practice demonstrate that the applicant's training is equivalent to an NAAB accredited educational program;

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

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

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

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

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

(1) IDP;

(2) current licensure in a recognized jurisdiction; or

(3) a current NCARB Council Record.

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

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

(a) a current NCARB Council Record; or

(b) passing scores on all divisions of the ARE as established by the NCARB.

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

R156-3a-304. Continuing Professional Education for Architects.

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

(1) During each two year period ending on March 31 of each even numbered year, a licensed architect shall be required to complete not less than 16 hours of qualified professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

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

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

(A) The definition of "health" shall include, but not be limited to, aspects of architecture that have salutary effects among users of buildings or sites and that address environmental issues. Examples include all aspects of air quality, provisions of personal hygiene, and use of non-toxic materials and finishes.

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

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

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

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

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

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

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

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

(d) unlimited hours may be recognized for continuing professional education that is provided via the Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining records of completed qualified continuing professional education for a period of four years after the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the 16 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 8 hours of qualified continuing professional education into the next two year period.

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

(8) Any licensee who fails to timely complete the continuing professional education hours required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement shall be required to complete 16 hours of continuing professional education

complying with this rule within two years prior to the date of application for reinstatement of licensure.

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

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

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

R156-3a-306. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee shall not engage in the practice of architecture while the license is on inactive status except to identify the individual as an inactive licensee.

(2) A license, prior to being placed on inactive status, shall be active and in good standing.

(3) Inactive status licensees are not required to fulfill the continuing education requirement.

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide documentation that the licensee, within two years of the license being reactivated, completed 16 hours of continuing education.

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

R156-3a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report, or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, report, or set of construction plans to be complete and final; or

(b) a building official for the purpose of obtaining a building permit;

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

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

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the July 2007 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference; or

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

R156-3a-503. Administrative Penalties.

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

TABLE

FINE SCHEDULE

Violation	First Offense	Second Offense
58-1-501(1)(a)	$ 800.00	$1,600.00
58-1-501(1)(b)	$1,000.00	$2,000.00
58-1-501(1)(c)	$1,000.00	$2,000.00
58-1-501(1)(d)	$1,000.00	$2,000.00
58-3a-501(1)	$ 800.00	$1,600.00
58-3a-501(2)	$ 800.00	$1,600.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-3a-502(1)(i).

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

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

(5) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

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

In accordance with Section 58-3a-601, all final plans and specifications of buildings erected in this state, prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(1) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(2) Each seal shall include the licensee's name, license number, "State of Utah", and "Licensed Architect".

(3) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(4) Each original set of final plans and specifications, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(5) A seal may be a wet stamp, embossed, or electronically produced.

(6) Copies of the original set of plans and specifications which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

KEY: architects, licensing

November 8, 2010	**58-3a-101**
Notice of Continuation January 31, 2011	**58-3a-303.5**
	58-1-106(1)(a)
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.
R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

(a) classifying Division adjudicative proceedings;

(b) clarifying the identity of presiding officers at Division adjudicative proceedings; and

(c) defining procedures for Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-46b.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

(a) denial of application for renewal of licensure, except denial of an application for renewal of a contractor license under Title 58, Chapter 55;

(b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5), except denial of an application for reinstatement of a contractor license under Title 58, Chapter 55;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b), except denial of an application for reinstatement of a contractor license under Title 58, Chapter 55;

(d) special appeals board held in accordance with Section 58-1-402;

(e) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

(f) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except disciplinary proceedings against a contractor licensed under Title 58, Chapter 55, which result in the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;

(vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 58-56-8(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) contested citation hearings held in accordance with Subsection 58-55-503(4)(b);

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes;

(q) denial of application for renewal of licensure as a contractor under Title 58, Chapter 55;

(r) denial of application for reinstatement of licensure as a contractor under Title 58, Chapter 55;

(s) disciplinary proceedings against a contractor licensed under Title 58, Chapter 55; and

(t) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(c) disciplinary proceedings against a contractor licensed under Title 58, Chapter 55.

R156-46b-301. Designation.

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-46b-1, and this rule.

(2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-46b-1, and this rule.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency

action if the proceeding was initiated by the Division, or together with the request for agency action if the proceeding was not initiated by the Division.

(3) An evidentiary hearing is required for the following informal proceedings:

(a) R156-46b-202(1)(l), contested citation hearings held in accordance with Title 58; and

(b) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 58-56-8(3).

(4) An evidentiary hearing is permitted for an informal proceeding pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing
July 8, 2010 63G-4-102(6)
Notice of Continuation January 31, 2011 58-1-106(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-50. Private Probation Provider Licensing Act Rule.
R156-50-101. Title.

This rule is known as the "Private Probation Provider Licensing Act Rule".

R156-50-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 50, as used in Title 58, Chapter 50 or this rule:

(1) "Direct supervision of staff" means that the licensee is responsible to direct and control the activities of employees, subordinates, assistants, clerks, contractors, etc., and shall review, approve and sign off on all staff duties and responsibilities. Members of staff shall not engage in those duties and functions performed exclusively by the licensee as defined under R156-50-603.

(2) "Probation agreement" means the court order which outlines the terms and conditions the probationer shall comply with during the time period of probation.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 50, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-50-502.

R156-50-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 50.

R156-50-104. 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.

R156-50-302. Qualifications for Licensure - Education and Equivalent Training Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the education and equivalent training requirements for licensure in Subsection 58-50-5(1) are defined, established and defined as follows:

(1) The baccalaureate degree shall include major study in social work, sociology, psychology, counseling, law enforcement, criminal justice, corrections or other related fields.

(2) The equivalent training shall consist of four years of full-time paid employment in private probation, social work, psychology, counseling, law enforcement, criminal practice, corrections or other related fields.

R156-50-303. 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 50 is established by rule in Section R156-1-308a.

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

R156-50-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and the continuing education requirement for renewal of licensure in Subsection 58-50-6(2), each person holding a license shall complete 40 hours of qualified continuing professional education (CPE) every two years.

(2) Those persons who become licensed during the renewal period shall be required to complete a total number of CPE hours based upon a formula of five hours of CPE for each of the remaining quarters in the renewal period.

(3) Programs will generally qualify for CPE if the program is related to probation, social work, psychology, counseling, law enforcement, criminal practice, correction or other related fields and if the program will enhance professional development.

(4) Training provided by the licensee for staff will not qualify.

(5) It is the responsibility of the licensee to obtain qualifying CPE and document the CPE on forms supplied by the Division.

(6) The Division may perform random audits to determine compliance with CPE.

R156-50-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) failing to comply with the continuing professional education requirement of Section R156-50-304;

(2) failing to comply with the operating standards required for a presentence report;

(3) failing to properly supervise the offender as set forth in the probation agreement;

(4) failing to disclose any potential conflict of interest relating to supervision of an offender as set forth in Subsection 58-50-2(5), including, but not limited to the following circumstances:

(a) simultaneously providing mental health therapy services and private probation services to the same offender;

(b) simultaneously providing education and/or rehabilitation services and private probation services to the same offender; or

(c) while providing private probation services to an offender, also providing any other service to the offender for which the licensee receives compensation;

(5) accepting any amount of money or gratuity from an offender other than that fee which is set forth in the probation agreement; or

(6) failing to report any violation of the probation agreement.

R156-50-601. Private Probation Services Standards - Probation Supervision.

In accordance with Subsection 58-50-9(5), the private probation services standards concerning probation supervision are established and defined as follows:

(1) The private probation provider shall perform the following minimum services for each offender who is referred by the court:

(a) conduct an initial interview/assessment with each offender and establish a plan of supervision which shall be known as the case plan;

(b) review the court ordered agreement with each offender and have the offender sign the probation agreement;

(c) review with each offender the court ordered payment contract which shall provide for the collection and distribution of fines and restitution payments, and fees for services performed by the licensee;

(d) after the initial assessment, conduct a personal interview with each offender in accordance with the case plan not less than once each month and as many additional times as necessary to determine that the offender is in compliance with the probation agreement; and

(e) submit written reports as required by the probation agreement.

(2) The private probation provider shall maintain and make available for inspection a current list of fees for services to be charged to the offender which shall be reviewed and approved by the court.

(3) The private probation provider shall be required to report to the court within two working days any new known criminal law violations committed by the offender or report any failure to comply with the terms and conditions of the probation agreement including payment of fines, restitution and fees.

(4) The private probation provider shall notify in writing the sentencing court and the office of the prosecuting attorney not less than ten working days prior to the date of termination

of any supervised probation. The notification shall include a report outlining the probationer's compliance with terms and conditions of the probation agreement including payment of any fines, restitution and fees.

R156-50-602. Private Probation Services Standards - Preparing Presentence Investigative Reports.

In accordance with Subsection 58-50-9(5), the private probation services standards concerning preparing presentence investigative reports are established and defined as follows:

(1) The private probation provider shall gather the following relevant information, if applicable:

(a) juvenile arrest and disposition records;

(b) adult arrest and disposition records;

(c) county attorney or city prosecutor file information;

(d) arresting officer's report;

(e) victim impact statement;

(f) driving history record;

(g) blood/breath alcohol content test results;

(h) treatment evaluations; and

(i) medical reports.

(2) The private probation provider shall conduct interviews with the following:

(a) the defendant;

(b) the victim, and

(c) the following when relevant and available:

(i) family;

(ii) friends;

(iii) school;

(iv) employers;

(v) military; and

(vi) past and present treatment providers.

(3) The private probation provider shall recommend restitution, when appropriate;

(4) The private probation provider shall refer to outside agencies, when appropriate, for additional evaluation;

(5) The private probation provider shall develop recommendations based upon a risk/needs assessment; and

(6) The private probation provider shall complete and submit the report to the court within not less than 24 hours prior to sentencing.

R156-50-603. Private Probation Services Standards - Duties and Responsibilities of the Private Probation Provider and Staff.

(1) In accordance with Subsection 58-50-9(5), the duties and responsibilities of the private probation provider shall include the following:

(a) review, approve and sign all reports required under this chapter or ordered by the court;

(b) conduct the initial interview/assessment with each offender;

(c) conduct at least one personal interview with each offender each month;

(d) conduct all interviews required in the preparation of the presentence report.

(2) The duties and responsibilities of the staff under direct supervision of the private probation provider include the following:

(a) assist in the gathering of information and the preparation of reports;

(b) perform other monthly interviews;

(c) contact offenders by telephone or in person to determine compliance with the case plan;

(d) collect fines, restitutions and fees for services; and

(e) other clerical duties as assigned by the licensee.

R156-50-604. Private Probation Services Standards - Distribution of Fines, Restitutions, and Service Fees.

In accordance with Subsection 58-50-9(5), private probation providers shall distribute court ordered fines and restitutions and private probation service fees which are collected by the private probation provider at least every month in equal proportions to the court, the victim, the licensee and any other parties ordered by the court until each party entitled to the monies are paid in full as determined by the court order and case plan.

KEY: licensing, probation, private probation provider

January 18, 2005	**58-50-1**
Notice of Continuation December 6, 2010	**58-1-106(1)(a)**
	58-1-202(1)(a)
	58-50-5(1)
	58-50-9(5)

R156. Commerce, Occupational and Professional Licensing.
R156-60d. Substance Abuse Counselor Act Rule.
R156-60d-101. Title.

This rule is known as the "Substance Abuse Counselor Act Rule."

R156-60d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60 or this rule:

(1) "Accredited institution", as used in Subsections 58-60-506(2)(a)(i), (2)(b)(i), (2)(c)(i), (2)(d)(i), (3)(a)(i), (3)(b)(i), (3)(c) and (3)(d), means an educational institution identified in the "Accredited Institution of Postsecondary Education", published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education at the same time the applicant obtained the education.

(2) "ASAM" means the American Society of Addiction Medicine Patient Placement Criteria.

(3) "DSM-IV" means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.

(4) "Formal classroom education", as used in Subsection R156-60d-302a, means college or university coursework through an accredited institution.

(5) "General supervision" means that the supervisor provides consultation with the supervisee by personal face to face contact, or direct voice contact by telephone or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

(6) "ICRC/AODA, Inc." means the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc.

(7) "Initial Assessment" means the procedure of gathering psycho-social information, which may include the application of the Addiction Severity Index, in order to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process and may include a referral to an appropriate treatment program.

(8) "NAADAC" means the National Association of Alcohol and Drug Abuse Counselors.

(9) "Qualified continuing education" means continuing education that meets the standards set forth in Section R156-60d-304.

(10) "SASSI" means Substance Abuse Subtle Screening Inventory.

(11) "Screening", as used in Subsection 58-60-502(6)(a), means a brief interview conducted in person or by telephone to determine if there is a potential substance abuse problem. If a potential problem is identified, the screening may include a referral for an Initial Assessment or a Substance Abuse Treatment Evaluation. The screening may also include a preliminary ASAM level recommendation in order to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.

(12) "Substance Abuse Treatment Evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist in order to determine if an individual meets the DSM-IV criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the Substance Abuse Treatment Evaluation process includes the determination of a DSM-IV diagnosis and the determination of an individualized treatment plan.

(13) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60d-502.

R156-60d-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 60, Part 5.

R156-60d-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.

R156-60d-302a. Qualifications for Licensure - Education Requirements.

The 300 hours of addiction counseling specific education set forth in Subsection 58-60-502(9) is defined as formal classroom education emphasizing alcohol and other drug addictions related to the practice of substance abuse counseling consisting of:

(1) a minimum of 18 hours in professional ethics and responsibilities; and

(2) a minimum of ten clock hours of training in each of the areas of practice as defined in Subsection 58-60-502(7).

R156-60d-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-506(2)(a)(iii)(A), (2)(b)(iii)(A), (2)(c)(ii)(A), (2)(d)(ii)A), the supervised qualifying experience shall:

(a) be supervised experience providing substance abuse counseling services as defined in Subsection 58-60-502(7);

(b) be completed in an approved agency as defined in Subsection 58-60-502(1);

(c) be supervised at a ratio of one hour of face-to-face direct supervision for every 40 hours of substance abuse counseling services provided by a supervisor who shall:

(i) until July 1, 2011, be licensed as a substance abuse counselor with at least one year of experience as a licensed substance abuse counselor;

(ii) beginning on July 1, 2011, be licensed as a substance abuse counselor with at least two years of experience as a licensed substance abuse counselor; or

(iii) be a licensed mental health therapist qualified by education and experience to treat substance abuse.

(d) be completed only when a licensed substance abuse counselor or mental health therapist is at the site where the supervised experience is occurring.

(2) In accordance with Subsection 58-60-511(1), hours of experience required by Section 58-60-506 that are earned after January 1, 2008 shall be earned while the person earning the hours is licensed as a certified substance abuse counselor, certified substance abuse counselor intern or certified substance abuse counselor extern.

R156-60d-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-60-506(1)(e), the examination required for licensure is one of the following:

(1) the written NAADAC National Certification Exam Levels I, II, or MAC with a minimum criterion score set by NAADAC; or

(2) the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc., with a minimum criterion score as set by ICRC/AODA, Inc.

R156-60d-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 60, Part 5 is established by rule in Section R156-1-308a.

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

R156-60d-304. Continuing Education for Licensed Substance Abuse Counselors and Certified Substance Abuse Counselors.

(1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of a licensed substance abuse counselor or certified substance abuse counselor license issued under Title 58, Chapter 60, Part 5.

(2) Continuing education shall consist of 40 hours of education directly related to the licensee's professional practice. A licensed substance abuse counselor shall complete the requirement during each two year license renewal cycle and a certified substance abuse counselor shall complete the requirement during each two year period following the date of initial licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.

(3) The required number of hours of continuing education for a licensed substance abuse counselor who first becomes licensed during the two year renewal cycle shall be decreased in a pro rata amount equal to any part of that two year renewal cycle preceding the date on which that individual first became licensed.

(4) The standards for continuing education shall include:

(a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance abuse counselor;

(b) documented relevance to the licensee's professional practice;

(c) a competent, well-organized, and sequential presentation consistent with the stated purpose and objective of the program;

(d) preparation and presentation by individuals who are qualified by education, training, and experience; and

(e) a competent method of registration of individuals who actually completed the continuing education program and records of that registration completion available for review.

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;

(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching continuing education courses in the field of substance abuse; and

(c) a maximum of six hours per two year period may be recognized for clinical readings or internet-based courses directly related to practice as a substance abuse counselor.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60d-307. License Reinstatement - Requirements.

In accordance with Subsection R156-1-308g, an applicant for reinstatement of a license after two years following expiration of that license shall demonstrate competency by:

(1) meeting with the Board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance abuse counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) passing the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc. or the NAADAC National Certification Exam Levels I, II, or MAC if it is determined by the Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a substance abuse counselor; and

(3) completing at least 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance abuse counselor.

R156-60d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Standards of Alcoholism and Drug Abuse Counselors" established by the NAADAC, August 18, 2008 edition, which is hereby incorporated by reference;

(2) exercising undue influence over the clinical judgment of a supervisor over whom the licensee has administrative control;

(3) if licensed as a licensed substance abuse counselor, accepting the duties as a supervisor of a certified substance abuse counselor or a certified substance abuse counselor intern who has any supervisory control over the licensed substance abuse counselor; and

(4) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.

R156-60d-601. Scope of Practice.

The scope of practice of a licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified substance counselor extern as used in Subsection 58-60-502(7) and the duties of the supervisor of a licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified substance abuse counselor extern as used in Section 58-60-508 are further defined and clarified as follows:

(1) A licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified substance abuse counselor extern may perform a Screening as defined in R156-60d-102(11), may perform an Initial Assessment as defined in R156-60d-102(7), and may assist in the evaluation process by meeting with the client to gather parts of the psycho-social information as directed by the supervising licensed mental health therapist. However, the licensed mental health therapist supervisor must see the individual face to face to conduct the Substance Abuse Treatment Evaluation as defined in R156-60d-102(12).

(2) A licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern and certified abuse counselor extern may also participate as part of the multi-disciplinary team in the development of the treatment plan, but may not independently diagnose and develop treatment plans, which are the responsibility of the licensed mental health therapist supervisor.

KEY: licensing, substance abuse counselors

August 24, 2010	**58-60-501**
Notice of Continuation January 31, 2011	**58-1-106(1)(a)**
	58-1-202(1)(a)

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 programs" means basic education and training that meets the standards set forth in Sections R156-63a-602 and R156-63a-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63a-604 that is approved by the Division.

(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 he 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) "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.

(7) "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.

(8) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63a-302a(1)(b) means a manager, director, or administrator of a contract security company.

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

(10) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(11) "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.

(12) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

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

(13) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), 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 an officer, director, manager or trainer of a contract security company;

(b) one member who is an 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 with the Department of Public Safety, Peace Officer Standards and Training Division.

(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 approval from the Division and periodically reviewing all approved basic education and training programs and firearm training programs regarding current curriculum requirements.

(3) The Education Advisory Committee shall consider, when advising the Board of the acceptability of an educational program, the following:

(a) whether the educational program meets the basic education and training requirements of Sections R156-63a-603 and R156-63b-603; and

(b) whether the educational program meets the basic firearm training program requirements of Sections R156-63a-604 and 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) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) 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 Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

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

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

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

(i) the Federal Bureau of Investigation for the applicant; and

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

(d) a copy of the driver license or Utah identification card issued to the applicant.

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

(a) the required firearms training pursuant to Section 58-63-604; and

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

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

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

(1) An applicant for licensure as an armed private security officer shall successfully complete a basic education and training program and a firearms training program approved by the Division, the content of which is set forth in Sections R156-63a-603 and R156-63a-604.

(2) An applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the Division, the content of which is set forth in Section R156-63a-603.

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 Security Personnel Qualifying Agent's 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 basic education and training final examination approved by the Division and administered by each provider of basic education and training.

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.

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

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

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions which may disqualify a person 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 controlled dangerous substances;

(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) Where not automatically disqualified pursuant to Subsections 58-63-302(1)(a), (2)(c) and (3)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.

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.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement 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.

(2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education. Such education shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

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

(d) observation and reporting techniques;

(e) ethics; and

(f) emergency techniques.

(3) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63a-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

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

(4) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(5) 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 accordingly as a pro rata amount of the requirements of a two-year period.

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-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer is exempt from licensure and may engage in practice as an unarmed or armed private security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the Division upon the application.

(2) Upon receipt of an application for licensure as an unarmed private security officer or as an armed private security officer, the Division may issue an on-the-job training letter to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an unarmed or as an armed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history re port from the Bureau of Criminal Identification showing "No Criminal Record Found";

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

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation; and

(e) the applicant has submitted all information required with the exception of the 16 hours of classroom or on-the-job education and training in accordance with Subsection R156-63a-603(2).

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) employing an unarmed or armed private security officer, as an on-the-job trainee exempted from licensure pursuant to Section R156-63a-307, who has been convicted of:

(a) a felony;

(b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the duties and functions of an unarmed or armed private security officer by the Division and Board indicates that the best interests of the public are not served;

(3) employing an unarmed or armed private security officer who fails to meet the requirements of Section R156-63a-307;

(4) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized

emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

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

(6) 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;

(7) being incompetent or negligent as an unarmed private security officer, an armed private security officer or by a contract security company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

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

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

(10) 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; and

(11) wearing an uniform, insignia, 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.

R156-63a-503. Administrative Penalties.

(1) 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

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

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

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

(5) 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 he has passed a firearms qualification course as defined in Section R156-63a-604.

(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 and where the officer has completed an appropriate qualification course 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. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the Division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) The applicant for program approval shall pay a fee for the approval of the education program.

(2) There shall be a written education and training manual which includes performance objectives.

(3) The program for armed private security officers shall provide content as established in Sections R156-63a-603 and R156-63a-604.

(4) The program for unarmed private security officers shall provide content as established in Section R156-63a-603.

(5) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(6) All instructors providing firearms training shall have the following qualifications:

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

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the Division, in collaboration with the Board, to be equivalent.

(7) All approved basic education and 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 files of the education and training program for at least three years.

(8) In the event an approved 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.

(9) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

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

An approved basic education and training program for armed and unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of a private

security officer and the private security officer's role in today's society;

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

(c) legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(d) situational response evaluations, including protecting and securing crime or accident scenes, notification of internal and external agencies, and controlling information;

(e) ethics;

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

(g) report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(h) patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, and monitoring potential safety hazards;

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

(j) sexual harassment in the work place; and

(k) a final examination which competently examines the student on the subjects included in the eight hours of basic classroom instruction in the approved program of education and training and which the student passes with a minimum score of 80%; and

(2) an additional 16 hours of basic education and training in the classroom, on-the-job or a combination thereof to include the following:

(a) two hours concerning the legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(b) two hours of situational response evaluations, including protecting and securing crime or accident scenes, notification of internal and external agencies, and controlling information;

(c) three hours covering the use of force, emphasizing the de-escalation of force and alternatives to using force;

(d) two hours of report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(e) four hours of patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, homeland security and monitoring potential safety hazards;

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

(g) one hour regarding sexual harassment in the work place; and

(h) a final examination approved by the Division, which competently examines the applicant on the subjects included in the additional 16 hour program of basic education and training and which the student passes with a minimum score of 80%.

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

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) the care and cleaning of the weapon;

(c) the prohibition against alterations of 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) the instruction that armed private security officers shall not fire their weapon unless there is an eminent 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 eminent threat to life; and

(2) 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 - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

In the event an officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company has a conviction entered regarding:

(a) a felony;

(b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the functions and

duties of an unarmed or armed private security officer by the Division and Board indicates that the best interests of the public are not served, the company shall within ten days of the conviction or notice reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

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 Utah identification card issued by the Division of Driver License or a current Utah driver's 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) No contract security company or its personnel shall utilize a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle pursuant to Subsection 41-6a-102(3).

(2) 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.

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; and
(r) sexual harassment in the workplace.

(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 - Standards of Conduct.

(1) Licensee employed by a contract security company:

(a) pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor shall notify the licensee's employing contract security company within 72 hours of the arrest, charge, or indictment;

(b) within 72 hours after such notification by the employee, the employing contract security company shall notify the Division of the arrest, charge or indictment in writing; and

(c) the written notification shall include the employee's name, the name of the arresting agency, the agency case number, the date and the nature of the criminal offense.

(2) Licensee not employed by a contract security company:

(a) pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer who is not employed by a contract security company shall directly notify the Division in writing within 72 hours of any arrest, charge or indictment above the level of a Class C misdemeanor; and

(b) the written notification shall meet the requirements of Subsection (1)(c).

KEY: licensing, security guards, private security officers
November 13, 2008 **58-1-106(1)(a)**
58-1-202(1)(a)
58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.
R156-78B-1. Title.

This ruleis known as the "Prelitigation Panel Review Rule".

R156-78B-2. Definitions.

In addition to the definitions in Section 78B-3-403, which shall apply to this rule:

(1) "Answer" means a responsive answer to a request.

(2) "Date of the panel's opinion", "issuance of an opinion", and "issue an opinion", as used in Subsections 78B-3-423(1)(a)(i), 78B-3-416(3)(a)(i)(A), and 78B-3-418(1)(a), respectively, mean the date the Division issues a panel opinion filed with the Division by a prelitigation panel.

(3) "Director" means the Director of the Division of Occupational and Professional Licensing.

(4) "File", "filing", or "filed" means a pleading or document filed with the Division with service to all parties as required in Section R156-78B-7.

(5) "Findings", "conclusions", "determinations", or "results", as used in Section 78B-3-419, means a written outcome of a prelitigation panel whether each claim against each health care provider has merit, and if meritorious, whether the conduct complained of resulted in harm to the claimant.

(6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, enacted by Congress in Pub. L. No 104-91 as implemented by 45 CFR Parts 160 and 164, as amended.

(7) "Issue" or "issued", as it relates to a written action or notice permitted or required from the Division, means the finalization of an action or notice by the Division as reflected by an authorized signature and date on the action or notice.

(8) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.

(9) "Motion" means a request for any action or relief permitted under Sections 78B-3-416 through 78B-3-420 or this rule.

(10) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.

(11) "Notice" means a notice of intent to commence action under Section 78B-3-412.

(12) "Panel" means the prelitigation panel appointed in accordance with Subsection 78B-3-416(4) to review a request.

(13)(a) "Panel opinion" or "opinion" as shortened in context with reference to a panel opinion, as used in Sections 78B-3-418, 78B-3-419, and 78B-3-423, means the supplemental memorandum opinion rendered by the prelitigation panel as required by Subsection R156-78B-14(2), that articulates the basis for the panel's findings, determinations or results as to whether each claim against each health care provider has merit and, if meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) If a supplemental memorandum opinion is not timely rendered by the prelitigation panel, "panel opinion" or "opinion" means the prelitigation panel findings, conclusions, determinations, or results.

(14) "Party" means a petitioner or respondent.

(15) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.

(16) "Petitioner" means any person who files a request with the Division.

(17) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.

(18) "Request" means a request for prelitigation panel review under Section 78B-3-416.

(19) "Respondent" means any health care provider named in a request.

(20) "Service" means service as set forth in Subsection R156-78B-7.

R156-78B-3. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 78B-3-416(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78B-4. General Provisions.

(1) Purpose.

This rule is intended to secure the just, speedy and economical determination of all issues presented to the Division.

(2) Deviation from Rule.

Except as otherwise required by Title 78B, Chapter 3, the Division may permit a deviation from this rule when it finds compliance to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Friday, Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is a scheduled workday for the Division. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

R156-78B-5. Representations - Appearances.

(1) Representation of Parties.

(a) A party may be represented by counsel or may represent onself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" means active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78B-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the Division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The Division shall give the matter a title in substantially the following form:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe,
Petitioner — Request for Prelitigation Review

-vs-

Richard Roe, — No. PR-XX-XX-XXX
Respondent

(2) Form and Content of Pleadings.

Pleadings must be double-spaced and typewritten and presented on standard 8 1/2" x 11" white paper. They must identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought. A request shall, by affirmation, set forth the date that the required notice was served, shall include a copy of the notice and shall reflect service of the request upon all parties named in the notice and request. When a petitioner fails to attach a copy of the notice to petitioner's request, the Division shall return the request to the petitioner with a written notice of incomplete request and conditional denial thereof. The notice shall advise the petitioner that his request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The Division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention of a motion.

(d) The Division or panel may permit or require oral argument on a motion.

R156-78B-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the Division with service thereof to all parties named in the notice. The Division may refuse to accept pleadings if they are not filed in accordance with the requirements of this rule.

(2) Process for Service.

(a) All pleadings and documents issued by the Division or panel that are required to be served shall at the option of the Division be served by personal service, first class mail, registered mail, certified mail, or by express mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the Division.

(b) A request for a prelitigation proceeding filed by a petitioner shall be served in accordance with the same process for service required for a notice of intent as set forth in Subsection 78B-3-412(3). All other pleadings or documents filed by a party shall at the option of the party be served by personal service, first class mail, registered mail, certified mail, or by express mail.

(c) When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

(3) Proof of Service.

(a) There shall appear on all pleadings or documents required to be served a certificate of service certifying the appropriate method of service as set forth in Subsection (2), in substantially the following form:

TABLE II

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail) (by registered mail) (by certified mail) (by certified mail, return receipt requested) (by type of express mail):

(Name of parties of record)
(addresses)

Dated this (day) day of (month), (year).

(Signature)
(Title)

(b) Any pleading or document filed with the Division shall be accompanied by documentation of the service reflected in the certificate of service.

(4) Date of Service.

Pleadings or documents shall be considered served on the date of personal service or mailing date, as set forth in Subsection (2).

R156-78B-8. Panel Selection and Compensation.

(1) The Division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to this rule.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78B-3-416(4) and (5).

(3) (a) In accordance with Subsection 78B-3-416(4), whenever multiple respondents are identified in a request, the Division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78B-3-416(4)(a);

(ii) one lay panelist member in accordance with

Subsection 78B-3-416(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78B-3-416(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78B-3-416(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with respect to any matter under consideration as required by Subsection 78B-3-416(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the Division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78B-3-416(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the Division whereupon the Division may appoint an additional panel member to assist in evaluating damages.

(5) The Division shall ensure that panelists possess all qualifications required by statute and this rule.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

I, (panel member), hereby affirm that, as a member of a prelitigation panel, I will discharge my responsibilities without bias towards any party. I also affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted to my consideration as a panel member.
Dated this (day) day of (month), (year).

(Signature)

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the Division.

R156-78B-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the Division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78B-3-416(2)(a);

(b) the request includes a copy of the notice in accordance with Subsection 78B-3-416(2)(b) and documentation that the notice was served in accordance with Section 78B-3-412; and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78B-3-416(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is filed with the Division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78B-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the Division, on forms available from the Division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the Division may schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the Division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the Division consent to a shorter period of time.

(e) The Division shall thereafter promptly select and appoint a panel in accordance with Subsections 78B-3-416(4) and (5) and this rule.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the Division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the Division, on forms approved by the Division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the Division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the Division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the Division may establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the

dates, the Division shall issue a notice of hearing resetting a date, time and a place for the prelitigation panel hearing.

(6) Requests Made By Incarcerated Person.

(a) If a request, notice, or other documentation indicates that the alleged malpractice occurred while the petitioner was incarcerated and the alleged malpractice claim is against the State of Utah, its agencies or employees, the request shall be denied based upon Subsection 63G-7-301(5)(j).

(b) Subsequent requests by or communications from a petitioner whose request has been denied under this subsection will not receive response unless the petitioner files an amended request and notice that demonstrates:

(i) that the alleged malpractice did not occur while the petitioner was incarcerated; or

(ii) that the alleged malpractice claim is not against the State of Utah, its agencies or employees or as provided in Section 63G-7-202.

R156-78B-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78B-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the Division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78B-3-416(3).

R156-78B-11. Prehearing Conferences.

The Division may, in exceptional circumstances as approved by a panel chair, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the prelitigation proceeding or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78B-12. Hearing Procedures.

(1) Authority Governing Hearing Procedures.

Prelitigation panel hearings are informal as provided by Subsection 78B-3-416(1)(c) and are not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act, and they are closed to the public as provided by Subsection 78B-3-417(5)(a).

(2) Duration of Prelitigation Hearings.

The duration of a prelitigation hearing shall be limited to two hours except as otherwise permitted to be extended in duration by the panel chair.

(3) Hearings Closed to the Public.

In accordance with Subsection 78B-3-417(5)(a), prelitigation hearings are closed to the public.

(4) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78B-13, all panel members appointed shall be present during the entire hearing.

(5) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

(a) Petitioner;

(b) Respondent; and

(c) Petitioner, if the panel chair permits petitioner to present rebuttal evidence.

(6) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78B-3-417, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(7) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their affairs. The panel shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(8) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(9) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(10) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78B-3-417(1) and Section 78B-3-418.

(11) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(12) Subpoenas - Discovery and Perpetuation of Testimony.

(a) Subpoenas for Medical Records Authorized - Discovery and Perpetuation of Testimony Prohibited.

The Division may issue subpoenas for the production of medical records directly related to a claim of medical liability in accordance with Subsection 78B-3-417(2) and (3). However, except as permitted by Subsection 78B-3-417(2) and (3) and in accordance with Subsection 78B-3-417(4), there is not discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Requirements and Process for Issuance of Subpoenas for Medical Records.

A request for a subpoena for medical records shall be prepared by the person requesting it in proper form for issuance by the Division and shall be supported by:

(i) a written release for the medical records signed by the individual who is the subject of the medical record or by that individual's guardian or conservator; or

(ii) an affidavit prepared by the person requesting the subpoena which shall include the indicated text:

TABLE IV

I hereby certify:
(1) that the medical record subject to the requested

subpoena is believed by the person requesting the subpoena ("requester") to be directly related to the medical liability claim to which the subpoena is related;

(2) that the requester will comply with the requirements of HIPAA as set forth in 45 CFR 164.512(e), which governs the release of protected health information in the course of administrative proceedings;

(3) that more specifically with regard to the requirements of HIPAA, the requester will provide a written statement and documentation to the covered entity from whom the medical records are sought demonstrating satisfactory assurances that:

(a) the requestor provided the subject of the records notice of the subpoena, information about the governing prelitigation proceeding, a time period to object to the release of the subject's medical records, and that either no objections were filed or thatobjections were filed but resolved by a court of competent jurisdiction and the subpoena is consistent with the resolution, as specified in 45 CFR 164.512(e)(1)(ii)(A) and detailed in 45 CFR 164.512 (e)(1)(iii); or

(b) the parties to the prelitigation proceeding have agreed to a qualified protective order and have presented it to a court of competent jurisdiction or the requestor has requested a qualified protective order from a court of competent jurisdiction, as specified in CFR 164.512(e)(1) (ii)(B) and detailed in 45 CFR 164.512(3)(1)(iv); and

(4) that if the recipient of the subpoena for medical records fails or refuses to comply with the subpoena, the requester understands that resolution of the issues regarding the subpoena needs to be through a court of competent jurisdiction.

R156-78B-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78B-14. Determination - Supplemental Opinion - Issuance of Panel Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78B-13, and, if applicable, submission of briefs by the parties, the panel shall render and file with the Division a determination whether each claim against each health care provider has merit or has no merit, and if meritorious whether the conduct complained of resulted in harm to the claimant. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall render and file with the Division a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Issuance of Panel Determination and Opinion.

In accordance with Subsections 78B-3-416(3)(a)(i)(A) and 78B-3-418(1)(a), it is the responsibility of a prelitigation panel to render its panel determination and opinion and file them with the Division, and the Division's responsibility to issue the panel determination and opinion.

(4) Certificate of Compliance.

(a) The Director or designee shall issue a certificate of compliance which recites that the petitioner has fully complied with the prelitigation panel requirements of Title 78B, Chapter 3, as follows:

(i) in the case of a meritorious finding or determination, the Division shall issue the certificate of compliance to the petitioner within 15 days after:

(A) the filing of the panel's memorandum opinion; or

(B) in the case of the panel's memorandum opinion not being filed, within 15 days after the deadline for the filing of the memorandum opinion;

(ii) in the case of a determination made under Subsection 78B-3-416(3)(d)(ii)(A), within 15 days after petitioner's filing of an affidavit of respondent's failure to reasonably cooperate in the scheduling of a prelitigation hearing;

(iii) in the case of a submission of a written stipulation that no useful purpose would be served by convening a prelitigation panel submitted under Subsection 78B-3-416(3)(e), within 15 days after the filing of the stipulation; and

(iv) in all other cases where an affidavit of merit is required as specified by Section 78B-3-423, within 15 days after the timely filing of the affidavit of merit.

(b) The Division shall include with its service of a certificate of compliance copies of supporting documentation including the applicable panel determination or finding, supplemental memorandum opinion, determination on petitioner's affidavit of respondent's failure to reasonably cooperate in the schedule of a prelitigation hearing, required affidavits of merit, etc.

(c) In accordance with Subsection 78B-3-423(6), a certificate of compliance shall not be issued to a person who fails to timely file a required affidavit of merit.

R156-78B-15. Affidavits alleging Failure to Reasonably Cooperate in Scheduling a Hearing.

(1) As required by Subsection 78B-3-416(3)(c)(ii), an affidavit submitted by a petitioner alleging a respondent's failure to reasonably cooperate in scheduling a prelitigation hearing shall be submitted within 180 days of petitioner's request for prelitigation panel review.

(2) The affidavit alleging respondent's failure to reasonably cooperate in scheduling a prelitigation hearing filed under Subsection (1) shall set forth specific factual allegations that:

(a) respondent failed to reasonably cooperate in scheduling a hearing; and

(b) the hearing could not be held within the jurisdictional time frame of 180 days from the date of the request for prelitigation review.

(3) Failure to reasonably cooperate in scheduling a hearing may include one or more of the following reasons:

(a) a respondent failed to agree upon a first and second choice of dates for a prelitigation hearing;

(b) a respondent failed to reasonably participate in determining the type of health care providers requested for the prelitigation hearing panel; or

(c) a respondent submitted a motion for and obtained a continuance of the prelitigation hearing and failed to timely submit a notice of availability for a rescheduled hearing.

(4) An affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing shall comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filing and service.

(5) A respondent may file a response to an affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(6) The Division shall review petitioner's affidavit alleging failure to reasonably cooperate in scheduling a hearing and respondent's counter affidavit, if any, and make a written determination within 15 days of the filing of petitioner's

affidavit, under either Subsections 78B-3-416(3)(d)(ii)(A) or (B). The written determination shall be accompanied by a certificate of compliance or a notice to file an affidavit of merit, as appropriate.

R156-78B-16a. Affidavits of Merit - In General.

(1) The required affidavit of merit under Subsection 78B-3-423(1) shall consist of two or more affidavits, one executed by counsel or by a pro se claimant as required by Subsection 78B-3-423(2)(a) and one or more signed by an appropriate health care provider or providers as required by Subsections 78B-3-423(2)(b) and (3).

(2) The required affidavits shall comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filings and service.

R156-78B-16b. Affidavits of Merit - Affidavit of Counsel.

Each affidavit of merit executed by counsel or by a pro se claimant as required by Subsections 78B-3-423(1) and (2)(a) shall include the following text immediately prior to the affiant's signature:

TABLE V

I hereby certify that the affiant has consulted with and reviewed the facts of the case with an appropriate health care provider (or providers) and that the provider (or providers) has (have) determined after a review of the medical record and other relevant material involved in the particular action that there is a
reasonable and meritorious cause for the filing of a medical liability action. The affidavit(s) of merit are attached.

R156-78B-16c. Affidavits of Merit - Affidavit of Health Care Provider or Providers.

(1) Each affidavit of merit signed by a health care provider as required by Subsections 78B-3-423(1) and (2)(b) shall include the following text immediately prior to the affiant's signature:

TABLE VI

I hereby certify that I am an appropriate health care provider qualified to render an affidavit of merit in this medical malpractice case as specified by Subsection 78B-3-423(3).
I further certify that I have reviewed the medical records and other relevant material involved in this medical malpractice case and have determined that in my opinion:
(1) There are reasonable grounds to believe that the applicable
standard of care was breached.
(2) The breach was a proximate cause of the injury claimed in the notice of intent to commence action.
(3) The specific reasons for my opinion are as follows (explanation).

(2) As provided by Subsection 78B-3-423(2)(c), the statement that there are reasonable grounds to believe that the applicable standard of care was breached shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection 78B-3-418(2)(a)(i).

R156-78B-16d. Affidavits of Merit - Appropriate Health Care Provider Affiant or Affiants.

The appropriate health care provider who is required to issue an affidavit of merit under Subsection 78B-3-423(3) and R156-78B-16c is clarified as follows. The health care provider shall:

(1) if none of the respondents is a physician under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, be one or more health care providers who hold an active and in good standing license in Utah or another state in the same specialty or the same class of license as the respondents; or

(2) if at least one of the respondents is a physician under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, be exclusively a physician who is licensed and in good standing in Utah or another state to practice medicine in all of its branches.

R156-78B-16e. Affidavits of Merit - Request for 60-day Extension to File.

(1) In accordance with Subsection 78B-3-423(4), a petitioner's request for a 60-day extension to file an affidavit of merit shall be supported by an affidavit signed by the petitioner's or petitioner's attorney that includes the following text immediately prior to the affiant's signature:

TABLE VII

I hereby certify that the claimant is unable to timely submit an affidavit of merit as required by Subsection 78B-3-423(1) because:
(1) a statute of limitations would impair the action; and
(2) the affidavit of merit could not be obtained before the expiration of the statute of limitations for the following reason or reasons (describe).
I further certify that this affidavit has been served on each respondent in accordance with Section R156-78B-7 on the earlier of:
(a) the required time frame specified in Subsection 78B-3-423(1)(b)(i); or
(b) the date this affidavit was filed with the Division.

(2) Any respondent may submit a response to a request for extension to file an affidavit of merit within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(3) The Division shall review a petitioner's affidavit in support of petitioner's request for a 60-day extension to file an affidavit of merit and respondent's counter affidavit, if any, and render a determination within 15 days after the filing of the request.

KEY: medical malpractice, prelitigation, certificate of compliance, affidavit of merit
January 10, 2011 78B-3-416(1)(b)
Notice of Continuation April 9, 2007

R156. Commerce, Occupational and Professional Licensing.
R156-83. Online Prescribing, Dispensing, and Facilitation Licensing Act Rule.
R156-83-101. Title.

This rule is known as the "Online Prescribing, Dispensing, and Facilitation Licensing Act Rule".

R156-83-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 83, as used in this rule:

(1) "Active and in good standing", as used in Subsections 58-83-302(1)(d), 58-83-302(2) and 58-83-302(3)(g), and "licensed in good standing", as used in Subsection 58-83-302(3)(a), is as defined in Subsection R156-1-102(1) and also includes that the license has not been subject to disciplinary action in the past three years.

(2) "Submit a copy of the internet facilitator's website", as used in Subsection 58-83-302(4)(g), means submitting the URL for the Internet facilitator's website, a site map, and a printout of the main pages.

(3) "Unprofessional conduct" is further defined, in accordance with Subsections 58-1-203(1)(e) and 58-83-102(9), in Section R156-83-502.

R156-83-103. 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 83.

R156-83-104. 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.

R156-83-302. Qualifications for Licensure - Liability Insurance Requirements.

In accordance with the provisions of Subsection 58-83-302(3)(e), an applicant who is approved for licensure as an online contract pharmacy shall submit proof of public liability insurance in coverage amounts of at least $1,000,000 per occurrence with a policy limit of not less than $3,000,000 by means of a certificate of insurance naming the Division as a certificate holder.

R155-83-303. 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 83 is established by rule in Subsection R156-1-308a(1).

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

R156-83-306. Drugs Approved for Online Prescribing, Dispensing, and Facilitation.

In accordance with Subsection 58-83-306(1)(c), the following legend, non-controlled drugs are approved for prescribing by an online prescriber:

(1) finasteride;
(2) sildenafil citrate;
(3) tadalafil;
(4) vardenafil hydrochlorid;
(5) hormonal based contraception (except injectable or implantable methods); and
(6) varenicline.

R156-83-308. Audit Reports.

In accordance with Subsection 58-83-308(3), an Internet facilitator licensed under this chapter shall provide quarterly reports to the Division containing the information listed in Subsection 58-83-308(3). The report is due on the fifteenth day of each quarter, i.e. January 15, April 15, July 15, and October 15.

R156-83-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an online facilitator to timely submit quarterly reports to the Division as established in Section R156-83-308;

(2) prescribing any medication to a patient while engaged in practice as an online prescriber without first reviewing a comprehensive health history, making an assessment, or establishing a diagnosis; and

(3) prescribing a drug listed in Section R156-83-306 for diagnosis that is not recognized by the Federal Food and Drug Administration to be treated by that prescribed drug.

KEY: licensing, online prescribing, internet facilitators
January 10, 2011 **58-1-106(1)(a)**
58-1-202(1)(a)
58-83-101

R162. Commerce, Real Estate.
R162-2a. Utah Housing Opportunity Restricted Account.
R162-2a-1. Utah Housing Opportunity Restricted Account.

(1) The authority to promulgate administrative rules by which an organization may apply to receive money from the account is granted by Section 61-2-204(10).

(2) As used in this section, "qualified entity" means an applicant that meets the qualifications of Section 61-2-204(7).

(3) To apply, a qualified entity shall, no later than August 1, submit to the division:

(a) contact information for the applicant;

(b) proof that the entity is tax exempt under Section 501(c)(3), Internal Revenue Code;

(c) proof that the entity provides support to organizations that create affordable housing for those in severe need as a primary part of its mission;

(d) a statement of the purpose for which the application is submitted;

(e) an explanation of how the entity proposes to use a disbursement of money to promote affordable housing for those in severe need; and

(f) an explanation of the internal management controls and financial controls of the entity that would ensure that any funds received would be used only for authorized purposes.

(4) Each year, the division shall make a disbursement to the qualified applicant that appears most likely to effectively and efficiently use the funds to promote affordable housing for those in severe need.

(5) Disbursement shall be made no later than December 31 each year.

KEY: Utah Housing Opportunity Restricted Account, application procedures
January 8, 2011 61-2-204

R162. Commerce, Real Estate.
R162-2c. Utah Residential Mortgage Practices and Licensing Rules.
R162-2c-101. Title.

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) "Branch lending manager" means the person assigned to oversee a branch office. As of November 1, 2010:

(a) a branch office registering in the nationwide database or renewing its registration shall identify an ALM to serve as the branch lending manager; and

(b) the individual identified by the branch office must be qualified for licensure as a PLM.

(3) The acronym "BLM" stands for branch lending manager.

(4) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(5) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(6) "Control person" means any individual identified by an entity within the nationwide database as being primarily responsible for directing the management or policies of a company and may be:

(a) a manager;

(b) a managing partner;

(c) a director;

(d) an executive officer; or

(e) an individual who performs a function similar to an individual listed in this Subsection (6).

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator, principal lending manager, branch lending manager, or associate lending manager.

(8) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(9) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(10) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(11) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(12) "Other trade name" means any assumed business name under which an entity does business.

(13) The acronym "PLM" stands for principal lending manager.

(14) "Qualifying individual" means the PLM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

(15) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

(16) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(17) "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(18) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) obtain a unique identifier through the nationwide database;

(iv) successfully complete, within the 12-month period prior to the date of application, 40 hours of Utah-specific pre-licensing education as approved by the division;

(v)(A) successfully complete 20 hours of pre-licensing education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or

(B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:

(I) approved by the nationwide database; and

(II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;

(vi) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) consist of a national component and a Utah-specific state component;

(vii) request licensure as a mortgage loan originator through the nationwide database;

(viii) authorize a criminal background check and submit fingerprints through the nationwide database;

(ix) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(x) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii)(A) successfully complete, within the 12-month period prior to the date of application, 40 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

(iv) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(v) request licensure as a mortgage loan originator through the nationwide database;

(vi) authorize a criminal background check through the nationwide database;

(vii) complete, sign, and submit to the division a social security verification form as provided by the division; and

(viii) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Principal lending manager. To obtain a Utah license to practice as a PLM, an individual shall:

(a) qualify as a mortgage loan originator through the nationwide database;

(b) evidence good moral character pursuant to R162-2c-202(1);

(c) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(d) obtain approval from the division to take the Utah-specific PLM prelicensing education by evidencing that the applicant has, within the five years preceding the date of application, had three years of full-time active experience as a mortgage loan originator;

(e) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific PLM prelicensing education as certified by the division;

(f)(i) if currently licensed in Utah as a mortgage loan originator, take and pass a principal lending manager examination as approved by the commission; or

(ii) if not currently licensed in Utah as a mortgage loan originator, take and pass:

(A) the Utah-specific state examination component; and

(B) a principal lending manager examination as approved by the commission;

(g) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(h) register in the nationwide database by selecting the "principal lending manager" license type and completing the associated MU4 form;

(i) complete, sign, and submit to the division a social security verification form as provided by the division; and

(j) pay all fees through the nationwide database as required by the division and by the nationwide database.

(3) Associate lending manager. To obtain a Utah license to practice as an ALM, an individual shall:

(a) comply with this Subsection (2)(a) through (g);

(b) register in the nationwide database by selecting the "associate lending manager" license type and completing the associated MU4 form; and

(c) pay all fees through the nationwide database as required by the division and by the nationwide database.

(4) Mortgage entity.

(a) To obtain a Utah license to operate as a mortgage entity, a person shall:

(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

(ii) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);

(iii) register any other trade name with the Division of Corporations and Commercial Code;

(iv) register the entity in the nationwide database by:

(A) submitting an MU1 form that includes:

(I) all required identifying information;

(II) the name of the PLM who will serve as the entity's qualifying individual;

(III) the name of any individuals who may serve as control persons;

(IV) the entity's registered agent; and

(V) any other trade name under which the entity will operate; and

(B) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(v) register any branch office operating from a different location than the entity;

(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(ix) provide to the division complete documentation of any action taken by a regulatory agency against:

(A) the entity itself; or

(B) any control person; and

(C) not disclosed through a previous application or renewal; and

(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading.

(5) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) if registering on or after November 1, 2010, the name of the ALM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (5).

(6) Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing

license.

(7) Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the PLM exam shall be valid for 90 days.

(8) Incomplete PLM or ALM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(9) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(10) Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant shall be denied a license for:

(i) criminal history as outlined in Section 61-2c-203(1)(a)-(f);

(ii) any misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within three years of the date of application;

(B) a plea agreement occurring within three years of the date of application; or

(C) a jail or prison release date falling within three years of the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

(i) criminal convictions or plea agreements entered more than three years prior to the date of application, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;

(ii) the circumstances that led to any criminal conviction or plea agreement under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with:

(A) terms of a diversion agreement still subject to prosecution;

(B) a probation agreement; or

(C) a plea in abeyance; or

(ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

(a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;

(d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;

(e) the extent and quality of the applicant's training and education in mortgage lending;

(f) the extent and quality of the applicant's training and education in business management;

(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;

(h) evidence of disregard for licensing laws;

(i) evidence of drug or alcohol dependency;

(j) sanctions placed on professional licenses; and

(k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

(a) access the credit information available through the NMLS of:

(i) an applicant for initial licensure, beginning October 18, 2010; and

(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

(b) give particular consideration to:

(i) outstanding civil judgments;

(ii) outstanding tax liens;

(iii) foreclosures;

(iv) multiple social security numbers attached to the individual's name;

(v) child support arrearages; and

(vi) bankruptcies.

(4) Age. An applicant shall be at least 18 years of age.

(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including:

(A) name, phone number, and address of the physical facility;

(B) name, phone number, and address of any school director;

(C) name, phone number, and address of any school owner; and

(D) an e-mail address where correspondence will be

received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

(A) type of school; and

(B) description of the school's physical facilities;

(iv) list of courses offered;

(v) proof that each course has been certified by the division;

(vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(vii) proof that each instructor:

(A) has been certified by the division;

(B) is qualified as a guest lecturer; or

(C) is exempt from certification under Subsection 203(5)(f);

(viii) schedule of courses offered, including the days, times, and locations of classes;

(ix) statement of attendance requirements as provided to students;

(x) refund policy as provided to students;

(xi) disclaimer as provided to students; and

(xii) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within 15 calendar days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(2) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) the number of quizzes and examinations; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(3) Course expiration and renewal.

(a) A certification for a 40-hour Utah-specific prelicensing course expires two years from the date of certification.

(b) As of January 1, 2010, a 20-hour Utah-specific prelicensing course certified by the division shall be deemed expired, regardless of any expiration date printed on the certification.

(c)(i) A division-approved continuing education course:

(A) shall expire on the expiration date printed on the certificate; or

(B) if the course is due to expire on December 31, 2010, the expiration date shall be extended to February 28, 2011.

(ii) To renew a division-approved continuing education course, a school applicant shall, within six months following the expiration date:

(A) complete a renewal form as provided by the division; and

(B) pay a nonrefundable renewal fee.

(iii) To certify a continuing education course that has been expired for more than six months, a school applicant shall

resubmit it as if it were a new course.

(iv) After a continuing education course has been renewed three times, a school applicant shall submit it for certification as if it were a new course.

(d) The division shall cease reviewing and certifying courses for continuing education on December 30, 2010.

(e) As of January 1, 2011, any division-approved continuing education course, regardless of when offered or completed, may not be used to satisfy requirements for the 2011 renewal.

(4) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in Subsection (f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the principal lending manager licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To certify as an instructor of continuing education courses, an individual shall demonstrate:

(i) knowledge of the subject matter of the course proposed to be taught, as evidenced by:

(A) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course;

(B) a bachelor or higher degree in the field of real estate, business, law, finance, or other academic area directly related to the course; or

(C) a combination of experience and education acceptable to the division; and

(ii) ability to effectively communicate the subject matter, as evidenced by:

(A) a state teaching certificate;

(B) successful completion of college courses acceptable to the division in the field of education;

(C) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(D) other evidence acceptable to the division that the applicant has the ability to teach in schools, seminars, or equivalent settings.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(ii) An instructor certification for division-approved continuing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least one class in the subject area for which renewal is sought within the year preceding the date of application; or

(B)(I) written explanation for why the instructor has not taught a class in the subject area within the past year; and

(II) documentation to evidence that the applicant maintains the required expertise in the subject matter; and

(C) a renewal fee as required by the division.

(iii) An instructor certification issued by the division on or before December 31, 2010 for continuing education shall expire December 31, 2010.

(iv) The division shall cease certifying instructors for continuing education on December 30, 2010.

(v) As of January 1, 2011, any instructor proposing to

teach a continuing education course shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor may reinstate an expired certification within 30 days of expiration by:

(A) complying with Subsection (g) as applicable to the type of course taught; and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor may reinstate a certification that has been expired more than 30 days by:

(A) complying with Subsection (g) as applicable to the type of course taught;

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301(6)(a) and R162-2c-301(7)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal.

(1) Renewal period.

(a) Any person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(b) Any person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(2) Qualification for renewal.

(a) Character.

(i) Individuals and control persons applying for a renewed license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony that resulted in a conviction or plea agreement during the renewal period; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(c) Continuing education.

(i) Beginning January 1, 2011, an individual who holds an active license as of January 1 of the calendar year shall complete eight hours of non-duplicative continuing education:

(A) approved through the nationwide database; and

(B) consisting of:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending);

(III) two hours non-traditional; and

(IV) one hour elective.

(ii) An individual who completes pre-licensing education and obtains the associated license between January 1 and December 31 of the calendar year is exempt from continuing education for the renewal period ending December 31 of the same calendar year.

(iii) Continuing education courses shall be completed within the renewal period.

(iv) Continuing education courses shall be non-duplicative of courses taken in the preceding renewal period.

(3) Renewal procedures for the renewal period ending December 31, 2010. In order to renew by December 31, 2010:

(a) an individual licensee shall:

(i) evidence having completed a minimum of:

(A) 20 hours of prelicensing education as approved by:

(I) the division; or

(II) the nationwide database; or

(B) 28 hours of division-approved continuing education in the two previous renewal cycles;

(ii) evidence having taken and passed a Utah licensing examination as approved by the commission;

(iii) register in the nationwide database by May 31, 2010;

(iv)(A) evidence having completed, since the date of last renewal, continuing education approved by either the division or the nationwide database, non-duplicative of any hours required to satisfy the registration education requirement under this Subsection (3)(a)(i), and:

(I) totaling 14 hours if licensed as of October 1, 2009; or

(II) totaling eight hours if licensed on or after October 1, 2009; or

(B) if licensed as a mortgage loan originator, evidence having completed, since January 1, 2010, all requirements to obtain an ALM or a PLM license, pursuant to Subsection R162-2c-201;

(v) take and pass the national component of the licensing examination as approved by the nationwide database;

(vi) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(vii) submit through the nationwide database:

(A) a request for renewal; and

(B) all fees as required by the division and by the nationwide database.

(b) an entity licensee shall:

(i) register in the nationwide database by May 31, 2010;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) submit through the nationwide database a request for renewal;

(iv) renew the registration of any branch office or other trade name registered under the license of the entity; and

(v) pay through the nationwide database all renewal fees required by the division and by the nationwide database.

(4) Renewal procedures for the renewal period ending December 31, 2011. In order to renew by December 31, 2011,

(a) an individual licensee shall:

(i) evidence having completed, since the date of last renewal, continuing education:
(A) as required by Subsection (2)(c);
(B) non-duplicative of any continuing education hours taken in the previous renewal cycle; and
(C) approved by the nationwide database;
(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and
(iii) submit through the nationwide database:
(A) a request for renewal; and
(B) all fees as required by the division and by the nationwide database.
(b) an entity licensee shall:
(i) submit through the nationwide database a request for renewal;
(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;
(iii) renew the registration of any branch office or other trade name registered under the entity license; and
(iv) pay through the nationwide database all renewal fees required by the division and by the nationwide database.
(5) Reinstatement.
(a) To reinstate an expired license, a person shall, by February 28 of the calendar year following the date on which the license expired:
(i) comply with all requirements for an on-time renewal; and
(ii) pay through the nationwide database all late fees and other fees as required by the division and the nationwide database.
(b) A person may not reinstate a license after February 28. To obtain a license after the reinstatement period described in Subsection (5)(a) expires, a person shall reapply as a new applicant.

R162-2c-205. Notification of Changes.
(1) An individual licensee who is registered with the nationwide database shall:
(a) enter into the national database any change in the following:
(i) name of licensee;
(ii) contact information for licensee, including:
(A) mailing address;
(B) telephone number(s); and
(C) e-mail address(es);
(iii) sponsoring entity; and
(iv) license status (sponsored or non-sponsored); and
(b) pay all change fees charged by the national database and the division.
(2) An entity licensee shall:
(a) enter into the national database any change in the following:
(i) name of licensee;
(ii) contact information for licensee, including:
(A) mailing address;
(B) telephone number(s);
(C) fax number(s); and
(D) e-mail address(es);
(iii) sponsorship information;
(iv) control person(s);
(v) qualifying individual;
(vi) license status (sponsored or non-sponsored); and
(vii) branch offices or other trade names registered under the entity license; and
(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.
(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:
(a) the entity;
(b) a branch office registered under the license of the entity; or
(c) another trade name registered under the license of the entity.
(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:
(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and
(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

R162-2c-301. Unprofessional Conduct.
(1) Mortgage loan originator.
(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:
(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;
(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;
(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:
(A) appraisal fees;
(B) inspection fees;
(C) credit reporting fees; and
(D) insurance premiums;
(iv) turn all records over to the sponsoring entity for proper retention and disposal;
(v) comply with a division request for information within 10 business days of the date of the request; and
(vi) retain certificates to prove completion of continuing education requirements for at least two years from the date of renewal.
(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:
(i) charge for services not actually performed;
(ii) require a borrower to pay more for third party services than the actual cost of those services;
(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;
(iv) alter an appraisal of real property; or
(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:
(A) providing a buyer or seller of real estate with a comparative market analysis;
(B) assisting a buyer or seller to determine the offering price or sales price of real estate;
(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;
(D) advertising the sale of real estate by use of any advertising medium;
(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or
(F) altering, on behalf of a buyer or seller, a Real Estate

Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

(A) the owner's contact information;

(B) the owner's role;

(C) the mortgage loan originator's contact information; and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) PLM.

(a) Affirmative duties. A PLM who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A PLM shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators.

(b) A PLM who hires ALM(s) as needed to assist in accomplishing the required affirmative duties shall:

(i) actively supervise any such ALM; and

(ii) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators and unlicensed staff.

(c) A PLM who manages an entity that operates a branch office shall:

(i) actively supervise the BLM who manages the branch office; and

(ii) remain personally responsible and accountable for adequate supervision of:

(A) mortgage loan originators sponsored by the branch office;

(B) unlicensed staff working at the branch office; and

(C) operations and transactions conducted by the branch office.

(d) Prohibited conduct. A PLM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A PLM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(e) A BLM:

(i) shall be subject to the same affirmative duties as a PLM; and

(ii) may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or PLM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any disciplinary action taken against a licensee for unprofessional conduct.

(b) The division may report in the nationwide database a complaint that the division has assigned for investigation.

(c) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(xii),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(x) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(ix) through (xii);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught;

(ii)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-302. Requirements for Record Retention and Disposal.

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain for the period set forth in Section 61-2c-302 the following records:

(i) application forms;

(ii) disclosure forms;

(iii) truth-in-lending forms;

(iv) credit reports and the explanations therefor;

(v) conversation logs;

(vi) verifications of employment, paycheck stubs, and tax returns;

(vii) proof of legal residency, if applicable;

(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

(ix) underwriter denials;

(x) notices of adverse action;

(xi) loan approval; and

(xii) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall take reasonable measures to safeguard personal information as that term is defined in Section 13-44-102.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention and disposal of records.

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

(i) an original or renewal application for a license;

(ii) an original or renewal application for a school

certification;

(iii) an original or renewal application for a course certification; and

(iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

(i) be in writing;

(ii) be signed by the requestor; and

(iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

(i) a complaint against a licensee; and

(ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) Informal adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

(i) a proceeding on an original or renewal application for a license;

(ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and

(iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

(a) the issuance of an original or renewed license when the application has been approved by the division;

(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;

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

(d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

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

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

(ii) Utah Administrative Code Section R151-46b; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

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

(e) Upon the scheduling of a hearing by the division and at least ten days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

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

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

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

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

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

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

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

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

(m) Upon filing a proper entry of appearance with the division pursuant to R151-46b-6, an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

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

(i) a notice of agency action;

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

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

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

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

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

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

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

KEY: residential mortgage, loan origination, licensing, enforcement

January 8, 2011 **61-2c-103(3)**
61-2c-402(4)(a)

R199. Community and Culture, Housing and Community Development.

R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.

R199-8-1. Purpose.

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 9-4-301 et seq.

R199-8-2. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by local governmental entities.

Eligible applicants include state agencies and subdivisions of the state and Interlocal agencies as defined in Subsection 9-4-302, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

R199-8-3. Application Requirements.

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Department of Community and Culture (DCC). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed one of the Trimester's upcoming "Application Review Meeting" agendas.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. Section 9-8-404 requires all state agencies before they expend any state funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants provide the Board's staff with a detailed description of the proposed project attached to the application. The Board's staff will provide SHPO with descriptions of applications which may have potential historic preservation concerns for SHPO's review and comment in compliance with the CIB/SHPO Programmatic Agreement. SHPO comments on individual applications will be provided to the Board as part of the review process outline in R199-8-4. Additionally the Board requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age;

Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to the Board on an annual basis and upon completion of the project.

R199-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" are "Project Review Meetings". The final meeting of each "Trimester" is the "Project Funding Meeting". Board meetings shall be held monthly on the 1st Thursday of each month, unless rescheduled or cancelled by the chairman or by formal motion of the board. The Trimesters shall be as follows:

1. 1st Trimester: application deadline, June 1st; Project Review Meetings, July, August, September; Project Funding Meeting October.

2. 2nd Trimester: application deadline, October 1st; Project Review Meetings, November, December, January; Project Funding Meeting, February.

3. 3rd Trimester: application deadline, February 1st; Project Review Meetings, March April, May; Project Funding Meeting, June.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application, on or before the applicable deadline to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on one of the Trimester's upcoming "Project Review Meeting" agendas.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Priority List" for consideration at the next "Project Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants shall make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings". If an applicant or its representatives are not present to make a presentation, the board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of circumstances described in Subsection F.

E. Applications for funding assistance which have been placed on the "Priority List" will be considered at the "Project Funding Meeting" for that Trimester. At the "Project Funding Meeting' the Board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

3. authorize funding the application in the amount and terms as determined by the Board.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.

R199-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from DCC. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to the Board, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or DCC's list, will not be funded by the Board, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than April 1st of each year. The up- dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R199-8-5-C, or is not in the uniform format required in R199-8-5-E, all applications from the affected county area will be held by the Board's staff until a future Trimester pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until a future Trimester to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Subsection C.

J. Not withstanding Subsection I, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next Trimester.

R199-8-6. Modification or Alteration of Approved Projects.

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate,

including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible us of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

R199-8-7. Procedures for Electronic Meetings.

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-7.8.

B. If one or more members of the Board or one or more applicant agencies 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 CIB 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.

C. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

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

F. 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: grants
January 13, 2011 9-4-305
Notice of Continuation September 13, 2007

R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. Definitions.

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;

(3) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

D. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

E. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

F. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

G. "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

H. "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

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

J. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

K. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

L. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

M. "Retained senior" means a student beyond the general compulsory education age who is authorized at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

(1) sickness;

(2) hospitalization;

(3) pending court investigation or action or both; or

(4) other extenuating circumstances beyond the control of the student.

N. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

O. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

P. "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

Q. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

R. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

S. "School year" means the 12 month period from July 1 through June 30.

T. "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

U. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

V. "SSID" means Statewide Student Identifier.

W. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

X. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-3B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

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

Z. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

AA. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

BB. "Youth in Custody (YIC)" means a person under the age of 21 who is:

(1) in the custody of the Department of Human Services;

(2) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or

(3) being held in a juvenile detention facility.

R277-419-2. 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 State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting

procedures used in apportioning and distributing state funds for education.

R277-419-3. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of school days for individual students and schools are provided for in R277-419-7.

(2) The required school days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the school day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate school days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(1) For the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in R277-484-7 and 8 and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-4. Student Membership.

A. Eligibility

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

(a) not have previously earned a basic high school diploma or certificate of completion;

(b) not be enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) not have unexcused absences on all of the prior ten consecutive school days;

(d) be a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) be of compulsory school age or a retained senior;

(f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership

shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days;

(3) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-5. High School Completion Status.

A. The final status of all students who enter high school (grades 10-12) shall be accounted for, whether they graduate or leave high school for other reasons. LEAs shall use the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1) dropped out, when no other status legitimately represents the reason for departure or absence from school;

(2) graduated with a high school diploma, by satisfying one of the options specified in R277-705-4B or for an out-of-school youth of school age, completed an adult education secondary diploma or a Utah high school completion diploma as defined in R277-733;

(3) received a certificate of completion:

(a) to qualify for a certificate, a student shall be in membership in twelfth grade on the last day of the school year; and

(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C;

(4) transferred out of state, out of the country, to a private school, to home schooling, or to an adult education program;

(5) transferred to higher education, without first obtaining either a diploma or certificate of completion;

(6) aged out of special education;

(7)(a) U.S. citizen who enrolled in another country as a foreign exchange student;

(b) non-U.S. citizen who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206(2)(i)(B) shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;

(8) withdrawn due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-4(A)(1)(f)(ii);

(9) expelled or suspended;

(10) died.

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

R277-419-6. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-7. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1Q, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment

January 10, 2011	**Art X Sec 3**
Notice of Continuation October 5, 2007	**53A-1-401(3)**
	53A-1-402(1)(e)
	53A-1-404(2)
	53A-1-301(3)(d)
	53A-3-404
	53A-3-410

R277. Education, Administration.
R277-733. Adult Education Programs.
R277-733-1. Definitions.

A. "Adult" means an individual 18 years of age or over.

B. "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs, provided by school districts or nonprofit organizations affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah who are out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school, to improve their literacy levels and to further their high school level education.

C. "Adult Basic Education (ABE)" means a program of instruction below the 9.0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:

(1) increasing their independence;

(2) improving their ability to benefit from occupational training;

(3) increasing opportunities for more productive and profitable employment; and

(4) making them better able to meet adult responsibilities.

D. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.

E. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

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

G. "Community-Based Organization (CBO)" means a nonprofit organization:

(1) eligible for and accepting federal AEFLA funds; and

(2) for the sole purpose of providing adult education services to qualified adult education learners.

(3) All rules and laws that apply to schools/school districts shall also apply to CBOs that receive adult education funding.

(4) CBOs:

(a) apply to the USOE;

(b) receive adult education funding through a competitive process; and

(c) receive USOE funding on a reimbursement basis only.

H. "Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other similar personal items for which a student retains ownership during the course of study.

I. "Desk monitoring" means the review of UTopia data to ensure program integrity.

J. "Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:

(1) is 17 years of age or older, and whose high school class has graduated; or

(2) is under 18 years of age and is married; or

(3) has been adjudicated as an adult; or

(4) is an out-of-school youth 16 years of age or older who has not graduated from high school.

K. "Enrollee" means an adult student who has 12 or more contact hours in an adult education program during a fiscal/program year, an academic assessment establishing an Entering Functioning Level, has an adult education Student Education Occupation Plan (SEOP) with an established goal, and a defined funding code. Enrollee status is based on the last date that all of the above items are entered into UTopia.

L. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

M. "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program. All fees are subject to approval by the local school board of education or local board of trustees.

N. "General Educational Development (GED) preparation" means a program that provides instruction in five specific subject areas for eligible adult education students who seek a Utah High School Completion Diploma by successfully passing all five GED Tests. This definition is effective on July 1, 2009.

O. "General Educational Development (GED) Testing" means the test required under R277-702.

P. "Latest official census data" means the most current statistical information available used to determine the number of adults who need adult education services, and determined by:

(1) individuals 16 years of age and older; or

(2) individuals 16 years of age and older whose primary language is other than English; or

(3) individuals 16 years of age and older without a high school diploma or its equivalency - ungraduated adults.

Q. "Measurable outcomes" means indicators of student achievement in adult education programs used for state funding purposes. These outcomes are described in R277-733-9.

R. "Other eligible adult education student" means an individual 16 to 19 years of age whose high school class has not graduated and is counted in the regular school program. The funds generated, weighted pupil unit (WPU) or collected fees or both, are credited to the adult education program for attendance in an adult education program.

S. "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.

T. "Participant" means an adult education student who does not meet the qualifications of an adult education enrollee.

U. "Teachers of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.

V. "Tuition" means the base cost of an adult education program that provides services to adult education students.

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

X. "Utah High School Completion Diploma" is a diploma issued by the Board and distributed by the GED Testing Centers as agents of the Board to an individual who passes all five subject areas of the GED Tests at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience.

Y. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.

Z. "Waiver release form" means a form signed at least annually by an adult education student allowing for release of the student's personal data and student education occupation plan, including social security number and GED scores, for data matching purposes with agencies such as the Department of Workforce Services, higher education, Utah State Office of Rehabilitation and GED Scoring Services. Signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training or career planning, or

other purposes.

R277-733-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, Section 53A-15-401 which places the general control and supervision of adult education under the Board, Section 53A-1-402(1) which allows the Board to adopt minimum standards for programs and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities. Additionally, the Board and Board of Regents are directed to provide adult education programs to inmates under Section 53A-1-403.5.

B. The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

R277-733-3. Federal Adult Education.

The Board adopts the Adult Education and Family Literacy Act (AEFLA), Title II of the Workforce Investment Act (WIA), Public Law 105-220, 20 U.S.C. 1201 et seq., hereby incorporated by reference, and the related current state plan required under that statute, as the standards and procedures governing both federal and state funding of adult education programs, administered by the USOE.

R277-733-4. Program Standards.

A. Local Utah adult education programs shall comply with state and federal requirements and Board rules and follow procedures as defined in the Utah Adult Education Policy and Procedures Guide published, updated, and available from the USOE.

B. Local Utah adult education programs shall make reasonable efforts to market and inform prospective students within their geographic areas of the availability of the programs and provide enrollment information.

C. Utah adult education services may be offered to qualifying individuals whose primary residence is located in a community closely bordering Utah not conducive to commuting to the bordering state's closest adult education program. These individuals if approved by the adult education program in the school district providing the services, shall not be charged out-of-state Adult Education tuition.

D. Adult education programs/courses may also be made available to Utah residents who are between the ages of 16 and 18, as determined necessary by local adult education programs.

E. Local adult education programs shall make reasonable efforts to schedule classes at local community sites and times that meet the needs of adult education students.

F. Each eligible adult education student shall have a written Student Education Occupation Plan (SEOP) defining the student's goal(s) based upon a complete academic assessment, prior academic achievement, work experience and an established Entering Functioning Level. Annually, the plan shall be reviewed by the student and a designated program official and maintained in the student's file along with a signed data matching/agency sharing waiver release form.

G. Only courses identified in R277-733-7 qualify for adult education funds.

H. Local adult education programs shall establish and maintain a local adult education advisory committee consisting of representation from the Utah Department of Workforce Services, Vocational Office of Rehabilitation, higher education and other interested community members with the responsibility to advocate for exemplary adult education programs through collaboration and partnerships with businesses and other community agencies.

I. The USOE shall evaluate local programs through tri-annual site monitoring visits, monthly desk monitoring, and as needed, additional site visits or both, to assure compliance.

J. Education staff, including program administrators, assigned to provide education services shall be qualified and appropriate for their assignments.

K. The teaching certificate and endorsement held by a staff member of a school district or community-based program shall be important in evaluating the appropriateness of the teacher's assignment, but not controlling. For instance, elementary teachers may teach secondary age students who are performing academically at an elementary level in certain subjects. Individuals teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects. Non-licensed individuals providing instruction in ESOL, ABE, GED Test preparation or AHSC classes shall instruct under the supervision of a licensed program employee.

L. Individuals with post-secondary degrees not in possession of a Utah teaching license may be considered for employment solely in an adult education program teaching adult students by obtaining an Alternative Route to License as defined in R277-518, Career and Technical Education Licenses.

M. Individuals with TESOL or ESOL credentials may be considered for employment solely in an adult education program teaching adult students following the completion of a student teaching experience in an accredited adult education program.

R277-733-5. Fiscal Procedures.

A. State funds appropriated for adult education are allocated in accordance with Section 53A-17a-119.

B. No eligible school district shall receive less than its portion of an eight percent base amount of the state appropriation if:

(1) instructional services approved by the USOE have been provided to eligible adult students during the preceding fiscal year; or

(2) the school district is preparing to offer such services--such a preparation period may not exceed two years.

C. Lapsing and nonlapsing funds

(1) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules.

(2) State adult education funds which are allocated to school district adult education programs and are not expended in a fiscal year may be carried over to the next fiscal year with written approval by the USOE. These funds may be considered in determining the school district's allocation for the next fiscal year. Carried over funds shall be expended within the next fiscal year. If funds are not expended, they shall be recaptured by the USOE on February 1 of each program year, and reallocated to other school district adult education programs based on need and effort as determined by the Board consistent with Section 53A-17a-119(3).

D. The USOE shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern the state (legislative) and federal AEFLA adult education funded programs. The Utah Adult Education Policy and Procedures Guide (updated annually) including forms, procedures and guidelines is available on the USOE adult education website.

R277-733-6. Adult Education Program Student Eligibility.

A. An individual is eligible to be a Utah adult education student if

(1) the prospective adult education student is at least 16 years of age and the student's class has not graduated; or

(2) a prospective adult education student who is otherwise eligible provides proof of Utah residency as defined in adult

education policy.

B. The following does not establish residency for purposes of adult education programs:

(1) mail addressed to occupant or resident;

(2) letters from friends or relatives;

(3) power of attorney documents;

(4) personal correspondence addressed to a post office box.

C. To be eligible for participation in an adult education program, a Utah resident shall be:

(1) an individual 17 years of age or older whose high school class/cohort has graduated; or

(2) an individual emancipated under Section 78-3a-1005; or

(3) an individual emancipated by marriage; or

(4) an individual who is at least 16 years of age who has not graduated from high school and who is no longer enrolled in a K-12 program of instruction; or

(5) a student 16 to 19 years of age whose class has not graduated and who is attending adult education classes as an alternative to a traditional public education program.

D. Non-Utah residents from states bordering Utah seeking enrollment into an adult education program in Utah shall be considered resident Utah students consistent with individual agreements between the Utah Adult Education Program and the individual states bordering Utah.

R277-733-7. Adult Education Pupil Accounting.

A. A Utah administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil (with part-time enrollment pro-rated by the school district) for a student who is a resident of a Utah school district who meets the following criteria:

(1) is at least 16 years of age but less than 19 years of age;

(2) who has not received a high school diploma or a Utah High School Completion Diploma;

(3) who intends to graduate from a K-12 high school; and

(4) who attends an SEOP meeting with his school counselor, school administrator/designee, parent/legal guardian to discuss the appropriateness of the student's participation in adult education.

B. A student 17 years of age or older, without a high school diploma but whose high school class has graduated, who is a Utah resident, and who intends to graduate from a K-12 high school, may, with parental/guardian consultation and written approval from all parties (if applicable), enroll in the state administered adult education program upon proof of Utah residency. Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

(1) The clock hours of students enrolled part-time shall be prorated.

(2) As an alternative, equivalent WPUs may be generated for competencies mastered on the basis of prior authorization of a school district plan by the USOE.

C. For purposes of funding in an adult education program, a student can only be a pupil in average daily membership once on any day. If the student's day is part-time in the regular school program and part-time in the adult education program, the student's membership shall be reported on a prorated basis for each program. A student may not be funded for more than one regular WPU for any school year.

D. An out-of-school youth (minimum age of 16) who has not graduated from high school, may, with parental/guardian written approval (if applicable), school district administrative written approval and proof of Utah residency, enroll in an adult education program:

(1) The WPU shall not be generated by the student's participation in an adult education program.

(2) This student shall be eligible for adult education state funding.

(3) This student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision including the following:

(a) The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the local adult education program; or

(b) The student may earn a Utah High School Completion Diploma upon successful passing of all five GED Tests; or

(c) The student may, at the discretion of the school district, return to his regular high school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional K-12 diploma shall be completed, provided that the student:

(i) is released from the adult education program; and

(ii) has not completed the requirements necessary for an Adult Education Secondary Diploma; or

(iii) has not successfully passed all five GED Tests and has not received a Utah High School Completion Diploma.

(4) An out-of-school youth of school age who has received an Adult Education Secondary Diploma is not eligible to return to a K-12 high school.

(5) An out-of-school youth of school age who has received a Utah High School Completion Diploma is not eligible to return to a K-12 high school unless it is required for the provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Chapter 33.

(6) An out-of-school youth of school age who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma shall be reported as a graduate for K-12 graduation (AYP) outcomes.

(7) An out-of-school youth of school age may be considered eligible to take the GED Test if all requirements as stated in R277-702, Procedures for Utah General Educational Development Certificate, are followed.

R277-733-8. Program, Curriculum, Outcomes and Student Mastery.

A. The Utah Adult Education Program shall offer courses consistent with the Utah Core curriculum under R277-700.

B. The Utah Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of the adult education student.

C. Written course descriptions for AHSC required and elective courses shall be developed by school district adult education programs for all classes taught, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.

D. Written course descriptions for GED Test preparation, ESOL and ABE courses shall be developed cooperatively by school districts, CBOs and the USOE based on Utah Core curriculum standards, modified for adult learners.

E. Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and the Core curriculum.

F. Course content mastery shall be stressed rather than completion of predetermined seat time in a classroom.

G. Adult high school completion education is determined by the following prerequisite courses:

(1) ESOL competency AEFLA levels one through six;

(2) ABE competency AEFLA levels one through four.

H. AHSC courses for students seeking an Adult Education Secondary Diploma should meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion

of 24 credits under the direction of a Utah licensed teacher as provided below:

(1) Adult High School Core Courses, as offered consistent with Utah Core objectives:

(a) 24.0 units of credit required through satisfaction of a course of study by demonstrated course competency or school district approved competency examination in correlation with the student's SEOP career focus;

(b) awarded adult education credit options including continuous professional employment training required for a professional license; or

(c) documented achievement of a trade or skill, basic or advanced military training;

(d) apprenticeship, union or registered work credentials;

(e) successfully passing all five GED Tests; academic credit for successfully passing all five GED Tests may only be applied toward an Adult Education Secondary Diploma if the proposed awarded units of credit were transcripted by June 30, 2009;

(f) transcripted college or university courses as they align to the following Core instructional areas:

(i) Language Arts: 4.0;

(ii) mathematics: 3.0, individualized mathematics courses to meet the life needs of adult learners;

(iii) science: 3.0, from the four science areas of chemistry, biological science, earth science, or physics;

(iv) social studies: 2.50, 1.0 in United States history, .50 in United States government and civics, .50 in geography; and .50 in world civilizations;

(v) arts: 1.50;

(vi) healthy lifestyles: 2.0, individualized courses meeting the life needs of adult learners that include: .25 - 1.50 health education, .25 - 1.50 individualized fitness for life courses;

(vii) career and technical education (CTE): 1.00;

(viii) general financial literacy: .50;

(ix) information technology: .50 computer technology courses or successful completion of school district approved competency examination;

(x) electives: 6.0 units of credit.

I. The USOE Adult Education Section and local education programs shall disseminate clear information regarding revised adult education graduation requirements.

J. Adult education students receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and satisfied through completed credits or demonstrated course competency or a Utah High School Completion Diploma upon successful passing all five of the GED Tests consistent with students' SEOP career focus.

K. Adult Education Secondary Diploma graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) from age 16 up until their 22nd birthday or an adult education SEOP, or both to meet unique educational needs.

L. A student's IEP or adult education SEOP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's disability(ies).

M. Modified graduation requirements for individual students shall:

(1) be consistent with the student's IEP or SEOP, or both;

(2) be maintained in the student's files;

(3) maintain the integrity and rigor expected for AHSC graduation.

N. School districts shall establish policies:

(1) allowing or disallowing adult education students participation in graduation activities or ceremonies; and

(2) allowing or disallowing adult education students from participating in the Utah Basic Skills Competency Test (UBSCT).

O. An adult education high school completion student may only receive an Adult Education Secondary Diploma earned through a designated Utah adult education program.

P. Adult education programs shall accept credits and grades awarded to students from other state recognized adult education programs, schools accredited by the Northwest Accreditation Commission or schools or programs approved by the Board without alteration.

Q. Adult education programs may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from schools or private providers.

R. A school district/adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

S. Adult education shall provide a program that allows students to transition between sites in a seamless manner.

T. An adult education student seeking a Utah High School Completion Diploma shall be offered a course of academic instruction designed to prepare the student to take the GED Tests.

U. A Utah High School Completion Diploma shall be issued by the Board and distributed by the GED testing centers as agents of the Board or directly by the USOE GED administrator. Receipt of the Utah High School Completion Diploma does not end entitlement to a free appropriate public education for a student eligible for special education under IDEA.

V. Upon completion of requirements for a Utah Adult Education Secondary Diploma, or a Utah High School Completion Diploma, adult education students may only continue in an adult education program to improve their basic literacy skills if:

(1) their academic skills are less than 12.9 grade level in an academic area of reading, math or English; and

(2) they lack sufficient mastery of basic educational skills to enable them to function effectively in society. The focus of instruction shall be solely literacy and is limited specifically to reading, math or English.

R277-733-9. Adult Education Programs--Tuition and Fees.

A. Any adult may enroll in an adult education class consistent with Section 53A-15-404.

B. Tuition and fees shall be charged for ABE, GED preparation, AHSC, or ESOL courses in an amount not to exceed $100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines, under the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq. The appropriate student fees and tuition shall be determined by the local school board or CBO board of trustees.

C. Adults who are or may attend adult education programs shall be given adequate notice of program tuition and fees through public posting. Any charged tuition or fees shall be set and reviewed annually.

D. Adult education tuition and fees shall be waived or students shall be offered appropriate work in lieu of waivers for students who are younger than 18, qualify for fee waivers under R277-407, and their class has not graduated.

E. Tuition may be charged for courses that satisfy requirements outlined in R277-733-8B, when adequate state or local funds are not available.

F. Fees may be charged for consumable and nonconsumable items necessary for adult high school courses that satisfy requirements outlined in R277-733-8B, consistent with the definitions under R277-733-1E and R277-733-1I.

G. Fees and tuition charged and collected by adult education programs shall be reasonable and necessary as determined by the local boards of education or boards or trustees.

H. Collected fees and tuition shall be used specifically to provide additional adult education and literacy services that the program would otherwise be unable to provide.

I. The local program superintendent/chief executive officer and business administrator shall acknowledge by signature as part of the program's grant plan (state or federal, or both) submission and program assurances that all fees and tuition collected and submitted for accounting purposes are:

(1) returned/delegated with the exception of indirect costs to the local adult education program;

(2) used solely and specifically for adult education programming;

(3) not withheld and maintained in a general maintenance and operation fund.

J. All collected fees and tuition generated from the previous fiscal year shall be spent in the adult education program in the ensuing program year.

K. Collected fees and tuition may not be counted toward meeting federal matching, cost sharing or maintenance of effort requirements related to the local program's award.

L. Annually, local programs shall report to the school district or community-based organization all fees and tuition collected from students associated with each funding source.

M. Fees and tuition collected from adult education students shall not be commingled or reported with community education funds or any other public education fund.

R277-733-10. Allocation of Adult Education Funds.

Adult education state funds shall be distributed to school districts offering adult education programs consistent with percentages defined in adult education policy in the following areas:

A. Base amount distributed equally to each participating school district with a Board-approved adult education plan and budget.

B. Enrollee status students (not participants).

C. Contact hours (instructional and non-instructional) for both enrollee status students and participants.

D. Adult Education Secondary Diplomas or Utah High School Completion Diplomas, whichever is awarded first.

E. Enrollee level gains: ESOL competency levels 1-6, ABE competency levels 1-4, and AHSC competency levels.

F. Enrollee adult education completed secondary credits.

F. Supplemental support, to be distributed to school districts for special program needs or professional development, as determined by written request and USOE evaluation of need and approval.

(1) Any school district with pre-approved carryover adult education funds from the previous fiscal year may negotiate a request for supplemental funding as needed.

(2) Priority of supplemental funding shall be given to school districts whose initial adult education allocation is less than one percent of the state allotted total, as indicated on the state allocation table.

(3) Any balance of supplemental funds may be applied for by all remaining eligible school districts.

G. Adult education federal AEFLA funds shall be distributed based on a competitive application. Second or subsequent year AEFLA funding shall be based on performance criteria established by the USOE, defined in adult education policy.

H. Funds, state (flow through) or federal (reimbursement) or both, may be withheld or terminated for noncompliance with state policy and procedures and associated reporting timelines as defined by the USOE.

R277-733-11. Adult Education Records and Audits.

A. Official records kept in perpetuity: To validate student outcomes, local programs shall maintain records for each program site in perpetuity which clearly and accurately show for each student:

(1) documentation of Utah residency; the student's initial managing program shall maintain documentation of Utah residency in the student's file in perpetuity; documentation of such proof shall be entered in the student's UTopia data record;

(2) copies of:

(a) transcripted grade data including previous report cards, transcripts, work verification, military training, professional licenses, union or registered work credentials;

(b) GED Test Score Report showing successful passing of all five areas of the GED Test;

(c) completed Core followup surveys;

(d) releases of information requesting student record information and releases of student information to other requesting agencies;

(e) special education IEPs for students under the age of 22; and

(f) outside psychological, psychiatric or medical documentation used in determining education programming accommodations; and records of accommodations.

B. To validate student outcomes annually, the student's managing program shall maintain records for each program site which clearly and accurately show for each student:

(1) signed or refusal to sign waiver of release forms;

(2) all assessment protocol sheets (pre- and post-tests) used to determine student's EFL and level gains; and

(3) contact hours (both noninstructional and instructional) documentation.

C. Audits:

(1) To ensure valid and accurate student data, all programs accepting either state or federal adult education funds, or both, shall enter and maintain required student data in the UTopia data system.

(2) Annually, an independent auditor shall be retained by each school district and CBO to audit student accounting records to verify UTopia data entries.

(3) Reports of accuracy shall be completed and submitted to the school districts' boards of education, the CBOs boards' of trustees, as appropriate, the local adult education program director, and the USOE.

(4) The USOE shall receive the final auditor report by September 15 annually.

(5) Local programs shall prepare and submit to the USOE a written corrective action plan for each audit finding by October 15 annually.

(6) USOE adult education staff members are responsible to monitor and assist programs in the resolution of corrective action plans.

(7) A program's failure to resolve audit findings may result in the termination of state and federal funding, or both.

(8) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to the school districts and CBOs by the USOE in cooperation with the State Auditors' Office and published under the heading of APPC-5.

(9) USOE Adult Education Services program staff shall conduct tri-annual program reviews of each program to ensure accuracy of program data and program compliance. Desk monitoring shall be completed during years when tri-annual reviews are not performed. Additional informal monitoring or reviews or site visits may be conducted as necessary and as follows.

(10) As needed, monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.

(11) USOE adult education staff are responsible to monitor and assist programs in the resolution of corrective action plans.

(12) A program's failure to resolve audit findings may result in the termination of state or federal funding or both.

(13) The USOE shall review for cause school district or CBO records and practices for compliance with the law and this rule.

R277-733-12. Advisory Council.

A. The State Superintendent of Public Instruction or designee shall represent Adult Education programs on the Department of Workforce Services State Council as a voting member.

B. Adult education programs shall participate on or establish and maintain a local interagency advisory council consisting at a minimum of partner agencies including the Department of Workforce Services, the State Office of Rehabilitation, higher education, the Utah College of Applied Technology, industry and community representation, and other appropriate agencies with the purpose of supporting the mission of adult education in Utah.

R277-733-13. Oversight, Monitoring, Evaluation, and Reports.

The Board may designate no more than two percent of the total legislative appropriation for adult education services to be used specifically by the USOE for oversight, monitoring, and evaluation of adult education programs and their compliance with law and this rule.

KEY: adult education

January 10, 2011	**Art X Sec 3**
Notice of Continuation October 5, 2007	**53A-15-401**
	53A-1-402(1)
	53A-1-401(3)
	53A-1-403.5
	53A-17a-119
	53A-15-404

R277. Education, Administration.
R277-800. Utah Schools for the Deaf and the Blind.
R277-800-1. Definitions.

A. "Accessible media producer" means companies or agencies that create fully-accessible specialized, student-ready formats for curriculum materials, such as Braille, large print, audio, or digital books.

B. "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind with members, responsibilities, and other provisions under Section 53A-25b-203 and R277-800-4.

C. "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing. These assessments may include the following areas of focus:

(1) valid, reliable and appropriate assessments given to determine eligibility for placement and services by a team of qualified professionals and the student's parent(s);

(2) functional assessments accomplished by observation and measurement of daily living skills and functional use of vision or hearing;

(3) academic evaluations as part of the Utah Performance Assessment System for Student (U-PASS), criterion reference tests (CRTs), or the Utah Alternative Assessment with appropriate accommodations as indicated on the individual education program (IEP).

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

E. "The Chafee Amendment to the Copyright Act, 17 U.S.C. Section 121" (Chafee Amendment) is a federal law that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner. Authorized entities are governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

F. "Child Find" means activities and strategies designed to locate, evaluate and identify individuals eligible for services under the IDEA.

G. "Consultation" means a meeting for discussion or the seeking of advice.

H. "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400, Part B, or Section 504 of the Rehabilitation Act of 1973.

I. "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness. The definition of deafblindness also includes the provisions of 53A-25b-102 and 301.

J. "Educational Resource Center" (ERC) is a center under the direction of the USDB that provides information, technology, and instructional materials to assist Utah children with sensory impairments in progressing in the curriculum. It is also the mission of the ERC to facilitate access to materials, information and training for teachers and parents of children with sensory impairments.

K. "Hearing impairment/deafness" ('hard of hearing' for purposes of this rule) is defined as follows:

(1) Hearing impairment is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

(2) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

L. "Local education agency" (LEA) means an agency that has administrative control and direction for public education. School districts, charter schools, and the USDB are LEAs.

M. "National Instructional Materials Access Center (NIMAC) is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

N. "National Instructional Materials Accessibility Standard" (NIMAS) means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

O. "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

P. "Related services" means those supportive services that are necessary for the appropriate implementation of the IEP. These may include but are not limited to speech pathology, audiology, low vision services, orientation and mobility, school counselor, transportation, school nurse, occupational therapy, or physical therapy.

Q. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973 means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

R. "Technical assistance" means assistance to public education employees or licensed educators, and parents and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

S. "USDB" means the Utah Schools for the Deaf and the Blind.

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

U. "Utah State Instructional Materials Access Center (USIMAC) is a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

V. Visual impairment (including blindness) is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness that adversely affects a student's educational performance.

W. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-25b-203 which directs the Board to appoint Advisory Council members and assign a USOE staff member as a liaison between the Board and the Advisory Council, Section 53A-25b-302 which directs the Board to establish entrance policies and procedures to be considered, consistent with IDEA, for student placement recommendations at the USDB, Section 53A-25b-501 to establish USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources, and Section

53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

R277-800-3. Board Authority Over and Support for USDB.

A. Consistent with Section 53A-25b-201, The Board is the governing board of the USDB.

B. The USDB superintendent, appointed consistent with Section 53A-25b-201(2), is subject to the direction of the Board and its executive officer, the State Superintendent of Public Instruction.

C. The Board shall appoint the USDB superintendent on the basis of outstanding qualifications.

(1) The USDB superintendent's term of office is for two years and until a successor is appointed and qualified.

(2) The Board shall set the USDB superintendent's compensation for services.

(3) The USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board.

D. The Board shall direct the USOE to support, provide assistance and work cooperatively with the USDB in providing services to designated Utah students.

E. The Board shall assign a liaison as provided in Section 53A-25b-203(8) to provide appropriate supervision to the USDB to ensure compliance with the law.

F. The Board and USOE staff, as assigned, shall assist the USDB and its superintendent and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(1) The USDB superintendent and associates may hire staff and teachers as needed for the USDB. Teachers and staff shall be appropriately licensed, credentialed or trained for their specific assignments.

(2) In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(3) The USDB superintendent and associates shall communicate regularly and effectively with the USOE and provide a report to the Board at least annually or as requested by the Board.

R277-800-4. USDB Advisory Council.

A. The Board shall appoint and support Advisory Council members as directed in Section 53A-25b-203.

B. Advisory Council members shall be appointed for two year terms and may serve no more than three consecutive terms. Advisory Council members serve at the pleasure of the Board.

C. If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner by seeking nominations from the representative group of the resigning member.

D. The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for nominating and recommending dismissal of Advisory Council members, and setting ethical standards for Advisory Council members.

(1) The bylaws shall include operating procedures for the Advisory Council; and

(2) the bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

E. Advisory Council membership and school community council membership:

(1) Members of the Advisory Council may serve as school community council members under Section 53A-1a-108(4) and R277-491.

(2) The USDB school community council and election process shall be consistent with Section 53A-1a-108 and R277-491.

(3) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students in voting and school community council meetings.

R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.

A. To be eligible to receive services from the USDB, a student must be a resident of Utah and meet requirements of Section 53A-25b-301.

B. A student's placement at USDB, in a school/school district or charter school shall be determined by the student's IEP under IDEA or Section 504 accommodation plan.

C. Consistent with Section 53A-25b-301(3)(c), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with IDEA using the Blind/Visually Impaired Guidelines, Deaf/Hard of Hearing Guidelines, or Deafblind Guidelines, as guidance. The USDB Guidelines are hereby incorporated by reference and included with this rule.

D. It is the responsibility of the student's district of residence or charter school to conduct Child Find under R277-800-1F, and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(1) A representative from the student's district of residence or charter school and a representative from the USDB shall be invited to the student's initial IEP or Section 504 accommodation plan meeting.

(2) The parental preference shall be considered in the IEP or Section 504 accommodation plan process consistent with Section 53A-25b-301(3)(c).

E. When USDB is the designated LEA, USDB has full responsibility for all services defined in the IEP/Section 504 accommodation plan. A representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation team.

F. When the district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB may be designated by the team as a related service provider. The USDB remains a required member of the student's IEP or 504 accommodation plan team.

G. The IEP or Section 504 accommodation plan shall clearly define what services are to be provided by the related service provider(s).

H. The IEP or Section 504 team shall determine the designated LEA for student placement.

I. Parent complaints regarding student placement at district of residence or USDB:

(1) If a parent is dissatisfied with a student's placement at USDB or district of residence or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, August 2007.

(2) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and district of residence, or for the USDB and district of residence to share responsibility for serving a student, the parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, August 2007.

R277-800-6. LEA and Board Interagency Agreement.

A. The Board, USOE and LEAs, with assistance from the USDB shall develop an Interagency Agreement that further explains roles, services, and financial obligations to students

and participating entities and a basic process for resolving disagreements among the parties to the Agreement.

B. The Board shall also designate a USOE arbitrator or a panel of arbitrators to resolve disagreements among the USOE, the USDB, and LEAs regarding services to blind, visually impaired, deaf, hard of hearing, and deafblind students in order to provide services.

R277-800-7. USDB Programs and Services-Student Eligibility.

A. The USDB shall provide services and resources only for students who are deaf, blind or deafblind.

(1) A student with multiple disabilities whose disabilities include blindness, deafness or deafblindness may receive USDB services consistent with the student's IEP.

(2) Non-disabled preschool-age children may participate in USDB funded preschool programs consistent with the requirements of IDEA that students with disabilities must be served in the least restrictive environment and that groups or classes of students with disabilities must include non-disabled peers. Non-disabled children participating in these programs shall pay fees or tuition or both in order to participate.

B. When the USDB is the designated LEA, the USDB shall provide all appropriate services to the student consistent with the student's IEP or Section 504 accommodation plan. Services may include:

(1) USDB instructional supports:

(a) assessments for eligibility, placement, and educational programming and evaluation;

(b) Utah Augmentative Communication Team (UAAACT) assessments to determine assistive technology needs;

(c) augmentative communication devices;

(d) assistive technology as needed;

(e) educational technology as needed;

(f) access to ERC;

(g) extended school year as determined by the IEP team;

(2) USDB related services to support student needs:

(a) audiology services as needed;

(b) behavior intervention;

(c) low vision services;

(d) nursing;

(e) occupational therapy;

(f) orientation and mobility;

(g) psychology;

(h) physical therapy;

(i) speech and language therapy;

(j) social work as needed;

(k) transportation, consistent with the USDB transportation policy.

(3) Services for students who are deaf/hard of hearing:

(a) American Sign Language/English bilingual instruction;

(b) auditory/oral instruction;

(c) auditory therapy;

(d) cued speech transliteration;

(e) American Sign Language interpretation;

(f) oral transliteration.

(4) Services for students who are blind/visually impaired:

(a) Braille instruction;

(b) instruction in the expanded core curriculum;

(c) environmental awareness;

(d) orientation and mobility support.

(5) Services for students who are deafblind:

(a) deafblind consultant;

(b) communication intervener.

C. When the USDB is determined by the IEP or Section 504 accommodation plan team to act as the outreach program provider, the USDB shall provide technical assistance, consultation, and professional development on issues related to sensory disabilities available to LEAs from the USDB at no charge. Services consistent with the student's IEP or Section 504 accommodation plan may include:

(1) assessments for eligibility, placement, and educational programming and evaluation;

(2) assistive and educational technology;

(3) technology demonstration labs;

(4) transition planning;

(5) audiology services as needed;

(6) instructional strategies;

(7) instructional materials;

(8) Braille or large print or both;

(9) communication methodologies;

(10) accommodations as necessary for educational gain;

(11) modifications as necessary for educational gain;

(12) educational interventions;

(13) low vision services;

(14) occupational therapy;

(15) physical therapy;

(16) psychology;

(17) speech/language pathology;

(18) vision and hearing screening;

(19) interpreter training.

D. The following services shall be provided by the USDB to the LEA of a student with sensory disabilities at no cost to the LEA:

(1) deafblind services (as determined through the IEP):

(a) consultation with the student's teacher, parent and the student;

(b) communication intervener.

(2) orientation and mobility;

(3) diagnostic services:

(a) Utah Augmentative Communication Team (UAAACT) assessments to determine assistive technology needs;

(b) deafblind state assessment and coaching team.

E. The following designated services shall be available from USDB at no charge for LEAs with less than three percent of the total Utah student population:

(1) outreach teacher:

(a) sensory-specific services to students:

(i) instruction;

(ii) assessments for eligibility, placement, and educational programming and evaluation;

(iii) monitoring of student progress.

(b) supports to classroom teacher:

(i) consultation;

(ii) technical assistance.

(2) Related services to support the student:

(a) audiology;

(b) low vision services.

(3) The USOE shall designate annually the LEAs that meet the three percent eligibility standards for specific identified services.

F. LEAs may contract with USDB to provide the following services, if qualified personnel are available:

(1) outreach teacher;

(2) related services;

(3) ASL interpretation;

(4) assessment;

(5) assistive and educational technology instruction.

G. The following materials are available to LEAs on loan from the USDB. The duration of the loan and immediate availability of resources may vary:

(1) ERC:

(a) textbooks (Braille, large print);

(b) teaching aids;

(c) library materials;

(d) professional library;

(e) described and captioned media.

(2) technology loan programs (limited to 30 days):

(a) assistive and adaptive technology loan program;
(b) related services technology loan program.
(3) The USDB shall develop a policy and process for publishing annually a list of materials available for loan, LEAs to whom materials may be loaned, and loan periods.
(a) The policy shall emphasize communication among LEAs and the USDB about availability of resources. Resources shall be determined by a student's IEP or Section 504 accommodation plan; the origin of the resources may be determined between an LEA and the USDB.
(b) The USDB shall develop a protocol for use in reviewing and ordering materials not immediately available when requested, as part of a student's education program.
(c) Students/parents/guardians are on notice that materials are loaned for the use of the student for a designated period for educational purposes. If loaned materials are lost, stolen, or damaged intentionally or due to student negligence, the student/parent/guardian shall be responsible to reimburse the LEA or USDB for the costs of the materials.

R277-800-8. Payment by LEAs for USDB Services Beyond USDB Obligation.

A. Certain services provided by USDB personnel, employees or contract employees are identified in R277-800-7 and shall be provided to LEAs at no cost consistent with the student's IEP or Section 504 accommodation plan.
B. Other services and resources may be available to LEAs from the USDB for a reasonable charge or fee paid by the LEA, to the extent of resources or personnel available. These services include:
(1) outreach teachers;
(2) related services;
(3) American Sign Language;
(4) student assessment; and
(5) assistive and educational technology instruction.
C. The USOE, USDB and LEAs shall determine appropriate fees, consistent statewide, for services subject to review by the Board, and notice to LEAs and parents of children currently receiving services from the USDB. The USDB shall review and publish its fee schedule for services to LEAs annually.

R277-800-9. Assessment of USDB Students with Visual and Hearing Impairments Served in LEAs of Residence.

A. Students shall be assessed consistent with Section 53A-1-601 et seq., R277-402, R277-700, R277-705, IDEA, Section 504 of the Rehabilitations Act, and Section 53A-25B-304.
B. The USDB shall establish an assessment policy and guidelines to implement required assessments and address:
(1) appropriate, complete and timely evaluations of students;
(2) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans and individual teachers;
(3) complete and accurate required assessments available to eligible students consistent with state and school district assessment timelines and availability of materials for non-disabled students;
(4) staff training and preparation on appropriate administration of assessments and reporting of assessment results; and
(5) procedures to ensure appropriate interpretation of assessments and results for parents and use of assessment results by USDB personnel.

R277-800-10. Outreach Programs.

A. The USDB and school districts or charter schools may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in public school classrooms in locations other than the USDB campus.
B. School districts or charter schools shall provide:
(1) classroom(s);
(2) basic instructional materials;
(3) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the school district or charter school;
(4) administrative support;
(5) basic secretarial services;
(6) special education related services.
C. The USDB shall provide:
(1) classroom instructors, including aides;
(2) instructional materials specific to the disability of the students.
D. The responsibilities of the USDB and a school district or charter school may be reassigned as negotiated between the school district or charter school and the USDB.
E. A school district or charter school shall claim the state WPU if the school district or charter school provides all items or services identified in R277-800-10B.

R277-800-11. USDB Fiscal Procedures.

A. The USDB shall keep fiscal, program and accounting records as required by the Board and shall submit reports required by the Board.
B. The USDB shall follow state standards for fiscal procedures, auditing and accounting, consistent with Section 53A-25b-105.
C. The USDB is a public state entity under the direction of the Board and as such is subject to state laws identified in Section 53A-25b-105 including State Money Management Act, Open and Public Meetings Act, Risk Management, State Building Board and Division of Facilities Construction and Management, Information Technology Services, Archives and Records Services, Utah Procurement Code, Budgetary Procedures Act, and Utah State Personnel Management Act.
D. The USDB shall prepare and present an annual budget to the Board that includes no more than a five percent carryover of any one fund, including reimbursement funds from federal programs.
E. Federal reimbursement funds (IDEA and Medicaid) shall be recovered quarterly during the year. Reimbursement amounts shall be identified in the current year's or no later than the subsequent year's budget.
F. The revenue from the federal land grant designated for the maintenance of the School for the Blind and for the School for the Deaf shall be used solely for the benefit of USDB students and the recommended or designated use of the fund is subject to review by the Board.

R277-800-12. Utah State Instructional Materials Access Center (USIMAC).

A. The Board authorizes the establishment of the USIMAC to produce core instructional materials in alternative formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.
B. The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.
C. The USOE shall oversee the operations of the USIMAC.
D. The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature.
E. LEAs may purchase accessible instructional materials

using their own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established procedures to ensure timely access for students with print disabilities.

F. For LEA textbook requests submitted by April 1 of the preceding school year, the USIMAC shall provide the textbook in the requested alternate format by the beginning of the following school year.

G. The USDB ERC shall serve as the repository and distribution center for the USIMAC.

H. Operation of the USIMAC

(1) Qualifying students: A student qualifies for accessible instructional materials from USIMAC (Braille, audio, large print, digital formats) following LEA determination that the student has a print disability in accordance with the Chafee Amendment, IDEA, or Section 504 of the Rehabilitation Act.

(2) Costs for developing core instructional materials:

(a) Textbooks for blind, vision impaired or deafblind students served by the USDB or LEAs shall be requested by the LEA consistent with the student's IEP or Section 504 accommodation plan.

(b) When an LEA requests a core instructional textbook that was published before August 2006, the USIMAC shall conduct a search for the textbook within existing resources and, if available, the textbook shall be sent to the ERC for distribution to the LEA.

(i) If the textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(ii) If the textbook is available through the American Printing House for the Blind (APH) the textbook shall be ordered and sent to the ERC for distribution to the LEA.

(iii) If the textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(iv) If the textbook is not available for purchase, the USIMAC will produce the textbook and send it to the ERC for distribution.

(A) The USIMAC shall purchase the LEA-requested textbook in accordance with copyright law. The cost of the student edition textbook shall be charged to the requesting LEA.

(B) The USIMAC shall produce the textbook in the LEA requested alternate format in accordance with the cost sharing outlined in the Interagency Agreement described in R277-800-6.

(c) The sharing of costs for purchases described in R277-800-12 shall be outlined in the Interagency Agreement described in R277-800-6. The presumption is that the LEA shall pay 75 percent of the cost and USIMAC shall pay 25 percent of the cost.

(d) For textbooks published since August 2006, the USIMAC shall follow the same procedures outlined in R277-800-12H(2)(b). If the USIMAC is unable to obtain the NIMAS file set in a timely manner as a result of publisher negligence, the Board shall authorize USIMAC to seek damages from publisher(s) as a result of the failure to meet contract provisions.

(3) Textbook publishers required to meet NIMAS requirements:

(a) All approved textbook contracts for the state of Utah for instructional materials published since August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to provide the NIMAS file set to the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines, the USIMAC shall bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set.

(c) The publisher shall be advised of the rule; the Utah Instructional Materials Commission under R277-469 shall not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(d) Requests for audio books shall be accessed through the USIMAC as appropriate or through the Recording for the Blind and Dyslexic (RFB and D) and Bookshare. Membership is required for RFB and D and Bookshare and the request is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

KEY: educational administration

December 8, 2009	**Art X Sec 3**
Notice of Continuation July 23, 2009	**53A-1-401(3)**
	53A-25b-203
	53A-25b-302
	53A-25b-501

R331. Financial Institutions, Administration.
R331-26. Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.
R331-26-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301, 7-3-18, 7-8-13, and 7-9-5.

(2) This rule applies to all depository institutions chartered by the State of Utah.

(3) The purpose of this rule is to protect the safety and soundness of state-chartered depository institutions by prescribing requirements and restrictions for the prudent management of real estate held for purposes other than conducting the depository institution's business.

R331-26-2. Definitions.

For the purposes of this rule:

(1) A "covered transaction" is a sale of a parcel of other real estate held by a depository institution where less than 10% of the total sales price is in cash; where the depository institution finances all or a portion of the sales price on terms more favorable than those customarily offered by the depository institution at that point in time when acting solely as lender; or where the transaction does not transfer from the depository institution to the buyer substantially all of the usual risks and benefits of ownership. A transaction ceases to be covered when all of the aforementioned conditions no longer apply. It will be deemed that 10% of the sales price has been paid in cash when the cash received by the depository institution as a down payment together with that portion of the sales price guaranteed to the depository institution by private mortgage insurance or an equivalent guarantee equals or exceeds 10% of the total sales price, or when the unpaid principal balance of any debt to the depository institution resulting from a covered transaction, less the amount of any private mortgage insurance or equivalent guarantee, falls below 90% of the total sales price.

(2) "Depository institution" means depository institution as defined in Section 7-1-103.

(3) "Fair value" is the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale. A fair sale means that buyer and seller are each acting prudently, knowledgeably and under no necessity to buy or sell. Any related appraisal should estimate the cash price that might be received upon exposure to the open market for a reasonable time, considering the property type and local market conditions. When it is unlikely that the sale can be completed within 12 months, the appraisal must discount all cash flows generated by the property to obtain the estimate of fair values. These cash flows include those arising from ownership, development, operation, and sale of the property. The discount applied shall reflect the appraiser's judgment of what a prudent, knowledgeable purchaser under no necessity to buy would be willing to pay to purchase the property in a current sale.

(4) "Other real estate" means all real property held by a depository institution except premises and real property acquired and held as a permitted investment.

(5) "Premises" means real property recorded as an asset on a depository institution's books or otherwise held by a depository institution which is used in the conduct of the depository institution's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future use where the minutes of the board of directors show the depository institution in good faith intends to utilize such property in the conduct of the depository institution's business within three years.

(6) The "recorded investment in the debt satisfied" is the unpaid balance of the debt, accrued and uncollected interest, any legal fees or direct costs of acquiring title to the property, unamortized premium and loan acquisition costs, if any, less any prior direct writedowns, unamortized discount, and finance charges.

(7) "Supervisor" means the appropriate supervisor within the Department of Financial Institutions.

R331-26-3. Purchasing, Holding, and Conveying Other Real Estate.

A state chartered depository institution may purchase, hold, and convey other real estate which is:

(1) taken to satisfy, in whole or part, a debt previously contracted;

(2) purchased at a sale to foreclose a lien or other security interest claimed by the depository institution in the property;

(3) former premises or property originally acquired for use by the depository institution but no longer used or intended to be used as such within the next three years; or

(4) real property sold by a depository institution in a covered transaction after the effective date of this rule.

R331-26-4. Limitations on the Holding of Other Real Estate.

(1) A depository institution may not hold any parcel of other real estate for a period longer than five years from the date title is transferred to the institution without the prior written approval of the appropriate supervisor.

(2) A depository institution may expend funds for the development and improvement of other real estate if the board of directors of the depository institution has determined there is a reasonable likelihood that the expenditure will increase the depository institution's recovery from sale or other disposition of the property in an amount greater than the total amounts to be expended, and the depository institution's interest in the property is otherwise sufficient to justify the expenditure. These requirements shall not apply to expenditures for routine repair and maintenance of the property nor to expenditures not exceeding $100,000 or 5% of the gross value of the property, whichever is less.

(3) A depository institution may assume or pay superior liens on other real estate if the depository institution's interest in the property is sufficient to justify such expenditure.

(4) A depository institution must diligently pursue all reasonable means to dispose of each parcel of other real estate and shall maintain a current record of all such efforts.

(5) Each parcel of other real estate will be accounted for at the lower of the recorded investment in the debt satisfied or its fair value on the date the property was transferred to other real estate. Any excess of the recorded investment in the debt satisfied over the fair value of the property must be charged against the reserve for loan losses.

(6) Real estate no longer used for depository institution business will be accounted for at the lower of its net book value or its fair value at the date of transfer to other real estate owned. Any excess of net book value over fair value shall be charged to expense for the current period.

(7) For each parcel of other real estate where the recorded investment in the loan satisfied is in excess of 5% of the equity capital or net worth of the depository institution or $250,000, whichever is less:

(a) prior to transfer to other real estate, fair value must be established by an appraisal prepared by an independent, qualified appraiser, and

(b) the depository institution must obtain annually from an independent qualified appraiser an appraisal, an updated appraisal, or an evaluation of the current fair value of each parcel of other real estate.

R331-26-5. Covered Transactions Authorized by Commissioner.

The commissioner authorizes any covered transaction to be booked as a receivable in accordance with Financial Accounting Standards Board Accounting Standards Codification 360.20, Real Estate Sales, which is incorporated by reference.

KEY: financial institutions, real estate, real estate investing
February 1, 2011 **7-1-301**
7-3-18
7-8-13
7-9-5

R339. Financial Institutions, Industrial Loan Corporations.
R339-6. Rule Clarifying Industrial Loan Corporation Investments.
R339-6-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(8), and construes and applies to Sections 7-8-13 and 7-8-14.

(2) This rule applies to industrial loan corporations and thrift institutions.

(3) This rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate pursuant to Sections 7-8-13 and 7-8-14.

R339-6-2. Definitions.

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule 339-6-3(1)(i), below.

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Commissioner" means the Commissioner of Financial Institutions.

(5) "Contractual commitment to advance funds" means an obligation on the part of the industrial loan corporation to make payments, directly or indirectly, to a designated third party contingent upon a default by the industrial loan's customer in the performance of an obligation under the terms of that customer's contract with the third party or an obligation to guarantee or stand as surety for the benefit of a third party to the extent permitted by law. The term includes standby letters of credit, guarantees, puts and other similar arrangements. Undisbursed loan or lease funds and loan or lease commitments not yet drawn upon are not considered a contractual commitment to advance funds.

(6) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(7) "Control" means "control" as defined in Section 7-1-103.

(8) "Depository institution" means "depository institution" as defined in Section 7-1-103.

(9) "Industrial loan corporation" means "industrial loan corporation" as defined in Section 7-1-103.

(10) "Institution" means institution as defined in Section 7-1-103.

(11) "Investment grade securities" means marketable obligations in the form of a bond, note, debenture or preferred stock rated in one of the four highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

(12) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating industrial loan corporation, but not the originating industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(13) "Loans and extensions of credit" does not include:

(a) A receipt by an industrial loan corporation of a check deposited in or delivered to the industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the industrial loan corporation, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring industrial loan corporation;

(c) An endorsement or guarantee for the protection of an industrial loan corporation of any loan or other asset previously acquired by the industrial loan corporation in good faith or any indebtedness to an industrial loan corporation for the purpose of protecting the industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the industrial loan corporation;

(e) The giving of immediate credit to an industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(14) "Parent" means any company which controls the industrial loan corporation.

(15) "Person" means "person" as defined in Section 7-1-103.

(16) "Prudent Investments" means any investment not expressly prohibited by law or rule and made in the exercise of judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(17) "Readily marketable government securities" means obligations in the form of a bond, bill, note or debenture issued or offered by any governmental agency, municipality or board which is rated in one of the four highest ratings of a nationally recognized rating service.

(18) "Real estate" means improved or unimproved real property.

(19) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to a designated third party on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the issuer's customer, or

(b) To make payment on account of any indebtedness undertaken by the issuer's customer, or

(c) To make payment on account of any default by the issuer's customer in the performance of an obligation.

(20) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(21) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(22) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(23) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan corporation's board of directors.

R339-6-3. Acceptable Investments for the Deposits and Other Funds of Industrial Loan Corporations.

(1) In the absence of a statute or rule to the contrary, an industrial loan corporation is unrestricted as to a percentage of its total capital being invested in the following:

(a) Cash, demand, or time deposits in a federally insured depository institution, or in deposits maintained directly with a federal reserve bank;

(b) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state or any of its political subdivisions;

(c) Any investment grade securities;

(d) Any securities purchased under agreements to resell;

(e) Leases, loans, or extensions of credit, whether unsecured or secured;

(f) Real estate contracts;

(g) Consumer and commercial installment sales contracts and security agreements;

(h) A subsidiary with the prior written approval of the commissioner upon finding that the subsidiary is primarily engaged in activities closely related to banking; or

(i) Such real estate as the industrial loan corporation may purchase at any sale, public or private, or which may be conveyed to the industrial loan corporation in satisfaction of or on account of a debt previously contracted in the conduct of its business upon which it had a mortgage, trust deed, judgment, assignment, lien or other claim as set forth in Rule R331-26.

(j) Any other investment with the prior written approval of the commissioner.

(2) An industrial loan corporation is restricted to 50% of its total capital at any one time being invested in the following:

Premises used in the conduct of the business which include real property and any interest therein, property such as furniture, fixtures, and equipment for use in carrying on its own business and the stock, bonds, debentures, or other obligations of any subsidiary or affiliate having as its exclusive activity the ownership and management of the property or interests.

(a) The amount invested in premises may exceed 50% of total capital upon application and finding by the commissioner that the additional investment is necessary to promote the viability and stability of the industrial loan corporation;

(b) If the use of any of the premises for the conduct of business of the thrift institution is discontinued, the industrial loan corporation shall consider the real property as an investment under the 10% of total capital limitation cited in Section (3) below.

(3) An industrial loan corporation is restricted to 10% of its total capital at any one time being invested in real estate other than real estate used in the premises in the conduct of the business or real estate purchased or conveyed on account of a debt previously contracted. Such limited investment by an industrial loan corporation may include real estate or participation interests in real estate whether in partnership, joint venture or participation interest in the real estate for the purpose of producing income or for inventory and sale or for improvement, including the erection of buildings on the real estate for sale or rental purposes, and the industrial loan corporation may hold, sell, lease, operate or otherwise exercise the rights of any owner of any property.

(4) An industrial loan corporation is restricted to an aggregate of 20% of its total capital at any time being invested in any other "prudent investments" not specifically mentioned above, in Rule R339-6-3(1) through (3); provided however, that the aggregate of investments in any form in any one person made pursuant to this section shall not exceed 10% of total capital.

KEY: financial institutions

February 1, 2011	**7-1-301**
Notice of Continuation September 24, 2007	**7-8-13**
	7-8-14

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.
R359-1. Pete Suazo Utah Athletic Commission Act Rule.
R359-1-101. Title.

This Rule is known as the "Pete Suazo Utah Athletic Commission Act Rule."

R359-1-102. Definitions.

In addition to the definitions in Title 63C, Chapter 11, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) "Unprofessional conduct" is as defined in Subsection 63C-11-302(25), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) for a promoter and a contestant, entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

(7) A "training facility" is a location where ongoing, scheduled training of unarmed combat contestants is held.

R359-1-201. Authority - Purpose.

The Commission adopts this Rule under the authority of Subsection 63C-11-304(1)(b), to enable the Commission to administer Title 63C, Chapter 11, of the Utah Code.

R359-1-202. Scope and Organization.

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R359-1-101 through R359-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R359-1-601 through R359-1-623 shall apply only to contests of boxing, as defined in Subsection R359-1-102(1). The provisions of Sections R359-1-701 through R359-1-702 shall apply only to elimination tournaments, as defined in R359-1-102(4). The provisions of Section R359-1-801 shall apply only to martial arts contest and exhibitions. The provisions of Section 859-1-901 shall apply only to "White-Collar Contests". The provisions of Sections R359-1-1001 through R359-1-1004 shall apply only to grants for amateur boxing.

R359-1-301. Qualifications for Licensure.

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is a promoter, timekeeper, manager, contestant, second, referee, or judge.

(2) A licensed amateur MMA contestant shall not compete against a professional unarmed combat contestant, or receive a purse and/or other remuneration (other than for reimbursement for reasonable travel expenses, consistent with IRS guidelines).

(3) A licensed manager shall not hold a license as a referee or judge.

(4) A promoter shall not hold a license as a referee, judge, or contestant.

R359-1-302. Licensing - Procedure.

In accordance with the authority granted in Section 63C-11-309, the expiration date for licenses issued by the Commission shall be one year from the date of issuance.

R359-1-401. Designation of Adjudicative Proceedings.

(1) Formal Adjudicative Proceedings. The following proceedings before the Commission are designated as formal adjudicative proceedings:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license;

(b) approval or denial of applications for renewal of a license;

(c) any proceedings conducted subsequent to the issuance of a cease and desist order; and

(d) the withholding of a purse by the Commission pursuant to Subsection 63C-11-321(3).

(2) Informal Adjudicative Proceedings. The following proceedings before the Commission are designated as informal adjudicative proceedings:

(a) approval or denial of applications for initial licensure;

(b) approval or denial of applications for reinstatement of a license; and

(c) protests against the results of a match.

(3) Any other adjudicative proceeding before the Commission not specifically listed in Subsections (1) and (2) above, is designated as an informal adjudicative proceeding.

R359-1-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R359-1-404.

(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure.

(5) The Commission shall be designated as the sole presiding officer in any adjudicative proceeding where no evidentiary hearing is conducted. The Commission shall be designated as the presiding officer to serve as the fact finder at evidentiary hearings.

(6) A majority vote of the Commission shall constitute its decision. Orders of the Commission shall be issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be signed by the Director or, in his or her absence, by the Chair of the Commission.

R359-1-403. Additional Procedures for Immediate License Suspension.

(1) In accordance with Subsection 63C-11-310(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

(2) The suspension shall be at such time and for such period as the Commission believes is necessary to protect the health, safety, and welfare of the licensee, other licensees, or the public.

(3) A licensee whose license has been immediately suspended may, within 30 days after the decision of the designated Commission member, challenge the suspension by submitting a written request for a hearing. The Commission shall convene the hearing as soon as is reasonably practical but not later than 20 days from the receipt of the written request, unless the Commission and the party requesting the hearing agree to conduct the hearing at a later date.

R359-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) A request for an evidentiary hearing in an informal adjudicative proceeding shall be submitted in writing no later than 20 days following the issuance of the Commission's notice of agency action if the proceeding was initiated by the Commission, or together with the request for agency action, if the proceeding was not initiated by the Commission, in accordance with the requirements set forth in the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

(3) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in an informal adjudicative proceeding.

R359-1-405. Reconsideration and Judicial Review.

Agency review is not available as to any order or decision entered by the Commission. However, any person aggrieved by an adverse determination by the Commission may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Utah Administrative Procedures Act or seek judicial review of the order pursuant to Sections 63-46b-14 through 63-46b-17.

R359-1-501. Promoter's Responsibilities in Arranging a Contest.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of $10,000.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the funds necessary for payment of contestants, referees, judges, timekeeper and the attending physician(s). The designated Commission member shall pay each contestant, referee, and judge in the presence of one witness. Payment for the attending physician(s) shall be made by the commission by the State of Utah.

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of $10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible, for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter should provide life insurance coverage of $10,000 for each contestant in case of death.

(11) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a)(i) $200 for a contest or event occurring in a venue of fewer than 500 attendees;

(ii) $300 for a contest or event occurring in a venue of at least 500 attendees but fewer than 1,000 attendees;

(iii) $400 for a contest or event occurring in a venue of at least 1,000 attendees but fewer than 3,000 attendees;

(iv) $600 for a contest or event occurring in a venue of at least 3,000 attendees but fewer than 5,000 attendees;

(v) $1000 for a contest or event occurring in a venue of at least 5,000 attendees but fewer than 10,000 attendees; or

(vi) $2000 for a contest or event occurring in a venue of at least 10,000 attendees; and

(b) 3% of the first $500,000, and one percent of the next $1,000,000, of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than $25,000.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

(i) a showcase event promoting a greater interest in contests in the state;

(ii) attraction of the optimum number of spectators;

(iii) costs of promoting and producing the contest or

exhibition;

(iv) ticket pricing;

(v) committed promotions and advertising of the contest or exhibition;

(vi) rankings and quality of the contestants; and

(vii) committed television and other media coverage of the contest or exhibition.

(viii) contribution to a 501(c)(3) charitable organization.

R359-1-502. Ringside Equipment.

(1) Each promoter shall provide all of the following:

(a) commission-approved gloves in whole, clean and in sanitary condition for each contestant;

(b) stools for use by the seconds;

(c) rubber gloves for use by the referees, seconds, ringside physicians, and Commission representatives;

(d) a stretcher, which shall be available near the ring and near the ringside physician;

(e) a portable resuscitator with oxygen;

(f) an ambulance with attendants on site at all times when contestants are competing. Arrangements shall be made for a replacement ambulance if the first ambulance is required to transport a contestant for medical treatment. The location of the ambulance and the arrangements for the substitute ambulance service shall be communicated to the physician;

(g) seats at ringside for the assigned officials;

(h) seats at ringside for the designated Commission member;

(i) ring (cage) cleaning supplies, including bucket, towels and disinfectant;

(j) a public address system;

(k) a separate dressing room for each sex, if contestants of both sexes are participating;

(l) a separate room for physical examinations;

(m) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;

(n) adequate security personnel; and

(o) sufficient bout sheets for ring officials and the designated Commission member.

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the county, city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms, for physical examinations or weigh-ins.

R359-1-503. Contracts.

(1) Pursuant to Section 63C-11-320, a copy of the contract between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.

(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.

(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.

(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

R359-1-504. Complimentary Tickets.

(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.

(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 63C-11-311(1).

(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.

(c) Pursuant to Subsection 63C-11-311(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.

(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.

(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:

(i) the Commission members, Director and representatives;

(ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and

(iii) holders of lifetime passes issued by the Commission.

(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:

(i) Any of the promoter's employees, and if the promoter is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;

(ii) Employees of the Commission;

(iii) A journalist who is performing a journalist's duties; and

(iv) A fireman or police officer that is performing the duties of a fireman or police officer.

(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:

(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;

(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;

(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;

(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;

(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the program.

(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.

(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.

(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

R359-1-505. Physical Examination - Physician.

(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

(a) eyes;
(b) teeth;
(c) jaw;
(d) neck;
(e) chest;
(f) ears;
(g) nose;
(h) throat;
(i) skin;
(j) scalp;
(k) head;
(l) abdomen;
(m) cardiopulmonary status;
(n) neurological, musculature, and skeletal systems;
(o) pelvis; and
(p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify the Commission of this determination, and the Commission shall prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

R359-1-506. Drug Tests.

In accordance with Section 63C-11-317, the following shall apply to drug testing:

(1) The administration of or use of any:
(a) Alcohol;
(b) Illicit drug;
(c) Stimulant; or

(d) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R359-1-506 (2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited for any unarmed combatant pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1- 506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the 2011 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2008 edition of the Prohibited List may be obtained, free of charge, at www.wada-ama.org.

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission for any unarmed combatant:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceril.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1)or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a licensee shall submit to a test of body fluids to determine the presence of drugs. A licensee shall give an adequate sample or it will deem

to be a denial. The promoter shall be responsible for any costs of testing.

(6) If the test results in a finding of the presence of a drug or if the licensee is unable or unwilling to provide a sample of body fluids for such a test, the Commission may take one or more of the following actions:

(a) immediately suspend the licensee's license in accordance with Section R359-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

(7) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."

(8) Unless the commission determines otherwise at a scheduled meeting, a licensee who tests positive for illegal drugs shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

R359-1-507. HIV Testing.

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is HIV negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HIV test was completed within 180 days prior to the contest.

(3) Any contestant whose HIV test is positive shall be prohibited from participating in a contest.

R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within one year prior to the contest. The period may be reduced by the commission to protect public safety in the event of an outbreak.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R359-1-509. Contestant Use or Administration of Any Substance.

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretional use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretional use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

R359-1-510. Weighing-In.

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighted more than once for any cause deemed sufficient by the commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative: or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges, timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required to be in attendance, or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

(e) The promoter may select the event announcer.

(2) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(3) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(4) All ring officials assigned and directed by the Commission to be in attendance at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total fees set by the Commission for all officials whom the

Commission directs to officiate in a contest or exhibition promoted by the promoter.

(7) Event Officials' Minimum Fee Schedule:

TABLE

NUMBER OF BOUTS	REFEREE	JUDGE	TIMEKEEPER
1-5	$100.00	$50.00	$35.00
>5	$100.00	$100.00	$50.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

R359-1-512. Announcer.

(1) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(2) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

(3) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

R359-1-513. Timekeeper.

(1) A timekeeper shall indicate the beginning and end of each round by the gong.

(2) A timekeeper shall possess a whistle and a stopwatch.

(3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.

(4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.

(5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

R359-1-514. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

(1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:

(a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

(d) refusal or inability of a contestant to comply with the rules of the contest.

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

R359-1-601. Boxing - Contest Weights and Classes.

(1) Boxing weights and classes are established as follows:

(a) Strawweight: up to 105 lbs. (47.627 kgs.)

(b) Light-Flyweight: over 105 to 108 lbs. (47.627 to 48.988 kgs.)

(c) Flyweight: over 108 to 112 lbs. (48.988 to 50.802 kgs.)

(d) Super Flyweight: over 112 to 115 lbs. (50.802 to 52.163 kgs.)

(e) Bantamweight: over 115 to 118 lbs. (52.163 to 53.524 kgs.)

(f) Super Bantamweight: over 118 to 122 lbs. (53.524 to 55.338 kgs.)

(g) Featherweight: over 122 to 126 lbs. (55.338 to 57.153 kgs.)

(h) Super Featherweight: over 126 to 130 lbs. (57.153 to 58.967 kgs.)

(i) Lightweight: over 130 to 135 lbs. (58.967 to 61.235 kgs.)

(j) Super Lightweight: over 135 to 140 lbs. (61.235 to 63.503 kgs.)

(k) Welterweight: over 140 to 147 lbs. (63.503 to 66.678 kgs.)

(l) Super Welterweight: over 147 to 154 lbs. (66.678 to 69.853 kgs.)

(m) Middleweight: over 154 to 160 lbs. (69.853 to 72.574 kgs.)

(n) Super Middleweight: over 160 to 168 lbs. (72.574 to 76.204 kgs.)

(o) Light-heavyweight: over 168 to 175 lbs. (76.204 to 79.378 kgs.)

(p) Cruiserweight: over 175 to 200 lbs. (79.378 to 90.80 kgs.)

(q) Heavyweight: all over 200 lbs. (90.80 kgs.)

(2) A contestant shall not fight another contestant who is outside of the contestant's weight classification unless prior approval is given by the Commission.

(3) A contestant who has contracted to box in a given weight class shall not be permitted to compete if he or she exceeds that weight class at the weigh-in, unless the contract provides for the opposing contestant to agree to the weight differential. If the weigh-in is held the day before the contest and if the opposing contestant does not agree or the contract does not provide for a weight exception, the contestant may have two hours to attempt to lose not more than three pounds in order to be reweighed.

(4) The Commission shall not allow a contest in which the contestants are not fairly matched. In determining if contestants are fairly matched, the Commission shall consider all of the following factors with respect to the contestant:

(a) the win-loss record of the contestants;

(b) the weight differential;

(c) the caliber of opponents;

(d) each contestant's number of fights; and

(e) previous suspensions or disciplinary actions.

R359-1-602. Boxing - Number of Rounds in a Bout.

(1) A contest bout shall consist of not less than four and not more than twelve scheduled rounds. Three minutes of boxing shall constitute a round for men's boxing, and two minutes shall constitute a round for women's boxing. There shall be a rest period of one minute between the rounds.

(2) A promoter shall contract with a sufficient number of contestants to provide a program consisting of at least 30 and not more than 56 scheduled rounds of boxing, unless otherwise approved by the Commission.

R359-1-603. Boxing - Ring Dimensions and Construction.

(1) The ring shall be square, and the sides shall not be less than 16 feet nor more than 22 feet. The ring floor shall extend not less than 18 inches beyond the ropes. The ring floor shall

be padded with a base not less than 5/8 of an inch of ensolite or another similar closed-cell foam. The padding shall extend beyond the ring ropes and over the edge of the platform, and shall be covered with canvas, duck, or a similar material that is tightly stretched and laced securely in place.

(2) The ring floor platform shall not be more than four feet above the floor of the building, and shall have two sets of suitable stairs for the use of contestants, with an extra set of suitable stairs to be used for any other activities that may occur between rounds. Ring posts shall be made of metal and shall be not less than three nor more than four inches in diameter, extending a minimum of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.

(3) The ring shall not have less than four ring ropes which can be tightened and which are not less than one inch in diameter. The ring ropes shall be wrapped in a soft material. The turnbuckles shall be covered with a protective padding. The ring ropes shall have two spacer ties on each side of the ring to secure the ring ropes. The lower ring rope shall be 18 inches above the ring floor. The ring shall have corner pads in each corner.

R359-1-604. Boxing - Gloves.

(1) A boxing contestant's gloves shall be examined before a contest by the referee and the designated Commission member. If gloves are found to be broken or unclean or if the padding is found to be misplaced or lumpy, they shall be changed before the contest begins.

(2) A promoter shall be required to have on hand an extra set of gloves that are to be used if a contestant's gloves are broken or damaged during the course of a contest.

(3) Gloves for a main event may be put on in the ring after the referee has inspected the bandaged hands of both contestants.

(4) During a contest, male contestants shall wear gloves weighing not less than eight ounces each if the contestant weighs 154 1bs. (69.853 kgs.) or less. Contestants who weigh more than 154 1bs. (69.853 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the wrist of the gloves and shall be secured. The tips of the laces shall be removed.

R359-1-605. Boxing - Bandage Specification.

(1) Except as agreed to by the managers of the contestants opposing each other in a contest, a contestant's bandage for each hand shall consist of soft gauze not more than 20 yards long and not more than two inches wide. The gauze shall be held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide. The adhesive tape must be white or a light color.

(2) Bandages shall be adjusted in the dressing room under the supervision of the designated Commission member.

(3) The use of water or any other substance other than medical tape on the bandages is prohibited.

(4) The bandages and adhesive tape may not extend to the knuckles, and must remain at least three-fourths of an inch away from the knuckles when the hand is clenched to make a fist.

R359-1-606. Boxing - Mouthpieces.

A round shall not begin until the contestant's form-fitted protective mouthpiece is in place. If, during a round, the mouthpiece falls out of the contestant's mouth, the referee shall, as soon as practicable, stop the bout and escort the contestant to his corner. The mouthpiece shall be rinsed out and replaced in the contestant's mouth and the contest shall continue. If the referee determines that the contestant intentionally spit the mouthpiece out, the referee may direct the judges to deduct points from the contestant's score for the round.

R359-1-607. Boxing - Contest Officials.

(1) The officials for each boxing contest shall consist of not less than the following:

(a) one referee;

(b) three judges;

(c) one timekeeper; and

(d) one physician licensed in good standing in Utah.

(2) A licensed referee, judge, or timekeeper shall not officiate at a contest that is not conducted under the authority or supervision of the designated Commission member.

(3) A referee or judge shall not participate or accept an assignment to officiate when that assignment may tend to impair the referee's or judge's independence of judgment or action in the performance of the referee's or judge's duties.

(4) A judge shall be seated midway between the ring posts of the ring, but not on the same side as another judge, and shall have an unimpaired view of the ring.

(5) A referee shall not be assigned to officiate more than 32 scheduled rounds in one day, except when substituting for another referee who is incapacitated.

(6) A referee shall not wear jewelry that might cause injury to the contestants. Glasses, if worn, shall be protective athletic glasses or goggles with plastic lenses and a secure elastic band around the back of the head.

(7) Referees, seconds working in the corners, the designated Commission member, and physicians may wear rubber gloves in the performance of their duties.

(8) No official shall be under the influence of alcohol or controlled substances while performing the official's duties.

R359-1-608. Boxing - Contact During Contests.

(1) Beginning one minute before the first round begins, only the referee, boxing contestants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(2) Once a contest has begun, only the referee, contestants, seconds, judges, Commission representatives, physician, the announcer and the announcer's assistants shall be allowed in the ring.

(3) At any time before, during or after a contest, the referee may order that the ring and technical area be cleared of any individual not authorized to be present in those areas.

(4) The referee, on his own initiative, or at the request of the designated Commission member, may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the manager or second of a contestant, the referee may disqualify the contestant or order the deduction of points from that contestant's score. If the conduct occurred after the decision was announced, the Commission may change the decision, declare no contest, or pursue disciplinary action against any licensed individual involved in the disruptive conduct.

R359-1-609. Boxing - Referees.

(1) The chief official of a boxing contest shall be the referee. The referee shall decide all questions arising in the ring during a contest that are not specifically addressed in this Rule.

(2) The referee shall, before each contest begins, determine the name and location of the physician assigned to officiate at the contest and each contestant's chief second.

(3) At the beginning of each contest, the referee shall summon the contestants and their chief seconds together for

final instructions. After receiving the instructions, the contestants shall shake hands and retire to their respective corners.

(4) Where difficulties arise concerning language, the referee shall make sure that the contestant understands the final instructions through an interpreter and shall use suitable gestures and signs during the contest.

(5) No individual other than the contestants, the referee, and the physician when summoned by the referee, may enter the ring or the apron of the ring during the progress of a round.

(6) If a contestant's manager or second steps into the ring or onto the apron of the ring during a round, the fight shall be halted and the referee may eject the manager or second from the ringside working area. If the manager or second steps into the ring or onto the apron a second time during the contest, the fight may be stopped and the decision may be awarded to the contestant's opponent due to disqualification.

(7) A referee shall inspect a contestant's body to determine whether a foreign substance has been applied.

R359-1-610. Boxing - Stalling or Faking.

(1) A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If after proper warning, the referee determines the contestant is continuing to stall or pull his punches, the referee shall stop the bout at the end of the round.

(2) A referee may consult the judges as to whether or not the contestant is stalling or faking and shall abide by a majority decision of the judges.

(3) If the referee determines that either or both contestants are stalling or faking, or if a contestant refuses to fight, the referee shall terminate the contest and announce a no contest.

(4) A contestant who, in the opinion of the referee, intentionally falls down without being struck shall be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant.

R359-1-611. Boxing - Injuries and Cuts.

(1) When an injury or cut is produced by a fair blow and because of the severity of the blow the contest cannot continue, the injured boxing contestant shall be declared the loser by technical knockout.

(2) If a contestant intentionally fouls his opponent and an injury or cut is produced, and due to the severity of the injury the contestant cannot continue, the contestant who commits the foul shall be declared the loser by disqualification.

(3) If a contestant receives an intentional butt or foul and the contest can continue, the referee shall penalize the contestant who commits the foul by deducting two points. The referee shall notify the judges that the injury or cut has been produced by an intentional unfair blow so that if in the subsequent rounds the same injury or cut becomes so severe that the contest has to be suspended, the decision will be awarded as follows:

(a) a technical draw if the injured contestant is behind on points or even on a majority of scorecards; and

(b) a technical decision to the injured contestant if the injured contestant is ahead on points on a majority of the scorecards.

(4) If a contestant injures himself trying to foul his opponent, the referee shall not take any action in his favor, and the injury shall be considered as produced by a fair blow from his opponent.

(5) If a contestant is fouled accidentally during a contest and can continue, the referee shall stop the action to inform the judges and acknowledge the accidental foul. If in subsequent rounds, as a result of legal blows, the accidental foul injury worsens and the contestant cannot continue, the referee shall stop the contest and declare a technical decision with the winner being the contestant who is ahead on points on a majority of the scorecards. The judges shall score partial rounds. If a contestant is accidentally fouled in a contest and due to the severity of the injury the contestant cannot continue, the referee shall rule as follows:

(a) if the injury occurs before the completion of four rounds, declare the contest a technical draw; or

(b) if the injury occurs after the completion of four rounds, declare that the winner is the contestant who has a lead in points on a majority of the scorecards before the round of injury. The judges shall score partial rounds.

(6) If in the opinion of the referee, a contestant has suffered a dangerous cut or injury, or other physical or mental condition, the referee may stop the bout temporarily to summon the physician. If the physician recommends that the contest should not continue, the referee shall order the contest to be terminated.

(7) A fight shall not be terminated because of a low blow. The referee may give a contestant not more than five minutes if the referee believes a foul has been committed. Each contestant shall be instructed to return to his or her respective corner by the referee. The contestants may sit in their respective corners with their mouthpiece removed. After removing their contestant's mouthpiece, the seconds must return to their seats. The seconds may not coach, administer water, or in any other way attend to their contestant, except to replace the mouthpiece when the round is ready to resume.

(8) If a contestant is knocked down or given a standing mandatory count of eight or a combination of either occurs three times in one round, the contest shall be stopped and a technical knockout shall be awarded to the opponent. The physician shall immediately enter the ring and examine the losing contestant.

(9) A physician shall immediately examine and administer aid to a contestant who is knocked out or injured.

(10) When a contestant is knocked out or rendered incapacitated, the referee or second shall not handle the contestant, except for the removal of a mouthpiece, unless directed by the physician to do so.

(11) A contestant shall not refuse to be examined by a physician.

(12) A contestant who has been knocked out shall not leave the site of the contest until one hour has elapsed from the time of the examination or until released by the physician.

(13) A physician shall file a written report with the Commission on each contestant who has been knocked out or injured.

R359-1-612. Boxing - Knockouts.

(1) A boxing contestant who is knocked down shall take a minimum mandatory count of eight.

(2) If a boxing contestant is dazed by a blow and, in the referee's opinion, is unable to defend himself, the referee shall give a standing mandatory count of eight or stop the contest. If on the count of eight the boxing contestant, in the referee's opinion, is unable to continue, the referee may count him out on his feet or stop the contest on the count of eight.

(3) In the event of a knockdown, the timekeeper shall immediately start the count loud enough to be heard by the referee, who, after waving the opponent to the farthest neutral corner, shall pick up the count from the timekeeper and proceed from there. The referee shall stop the count if the opponent fails to remain in the corner. The count shall be resumed when the opponent has returned to the corner.

(4) The timekeeper shall signal the count to the referee.

(5) If the boxing contestant taking the count is still down when the referee calls the count of ten, the referee shall wave both arms to indicate that the boxing contestant has been knocked out. The referee shall summon the physician and shall then raise the opponent's hand as the winner. The referee's count is the official count.

(6) If at the end of a round a boxing contestant is down

and the referee is in the process of counting, the gong indicating the end of the round shall not be sounded. The gong shall only be sounded when the referee gives the command to box indicating the continuation of the bout.

(7) In the final round, the timekeeper's gong shall terminate the fight.

(8) A technical knockout decision shall be awarded to the opponent if a boxing contestant is unable or refuses to continue when the gong sounds to begin the next round. The decision shall be awarded in the round started by the gong.

(9) The referee and timekeeper shall resume their count at the point it was suspended if a boxing contestant arises before the count of ten is reached and falls down again immediately without being struck.

(10) If both boxing contestants go down at the same time, counting will be continued as long as one of them is still down or until the referee or the ringside physician determines that one or both of the boxing contestants needs immediate medical attention. If both boxing contestants remain down until the count of ten, the bout will be stopped and the decision will be scored as a double knockout.

R359-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R359-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.

R359-1-614. Boxing - Waiting Periods.

(1) The number of days that shall elapse before a boxing contestant who has competed anywhere in a bout may participate in another bout shall be as follows:

TABLE

Length of Bout (In scheduled Rounds)	Required Interval (In Days)
4	3
5-9	5
10-12	7

R359-1-615. Boxing - Fouls.

(1) A referee may disqualify or penalize a boxing contestant by deducting one or more points from a round for the following fouls:

(a) holding an opponent or deliberately maintaining a clinch;

(b) hitting with the head, shoulder, elbow, wrist, inside or butt of the hand, or the knee.

(c) hitting or gouging with an open glove;

(d) wrestling, spinning or roughing at the ropes;

(e) causing an opponent to fall through the ropes by means other than a legal blow;

(f) gripping at the ropes when avoiding or throwing punches;

(g) intentionally striking at a part of the body that is over the kidneys;

(h) using a rabbit punch or hitting an opponent at the base of the opponent's skull;

(i) hitting on the break or after the gong has sounded;

(j) hitting an opponent who is down or rising after being down;

(k) hitting below the belt line;

(l) holding an opponent with one hand and hitting with the other;

(m) purposely going down without being hit or to avoid a blow;

(n) using abusive language in the ring;

(o) un-sportsmanlike conduct on the part of the boxing contestant or a second whether before, during, or after a round;

(p) intentionally spitting out a mouthpiece;
(q) any backhand blow; or
(r) biting.

R359-1-616. Boxing - Penalties for Fouling.

(1) A referee who penalizes a boxing contestant pursuant to this Rule shall notify the judges at the time of the infraction to deduct one or more points from their scorecards.

(2) A boxing contestant committing a deliberate foul, in addition to the deduction of one or more points, may be subject to disciplinary action by the Commission.

(3) A judge shall not deduct points unless instructed to do so by the referee.

(4) The designated Commission member shall file a complaint with the Commission against a boxing contestant disqualified on a foul. The Commission shall withhold the purse until the complaint is resolved.

R359-1-617. Boxing - Contestant Outside the Ring Ropes.

(1) A boxing contestant who has been knocked, wrestled, pushed, or has fallen through the ropes during a contest shall not be helped back into the ring, nor shall the contestant be hindered in any way by anyone when trying to reenter the ring.

(2) When one boxing contestant has fallen through the ropes, the other contestant shall retire to the farthest neutral corner and stay there until ordered to continue the contest by the referee.

(3) The referee shall determine if the boxing contestant has fallen through the ropes as a result of a legal blow or otherwise. If the referee determines that the boxing contestant fell through the ropes as a result of a legal blow, he shall warn the contestant that the contestant must immediately return to the ring. If the contestant fails to immediately return to the ring following the warning by the referee, the referee shall begin the count that shall be loud enough to be heard by the contestant.

(4) If the boxing contestant enters the ring before the count of ten, the contest shall be resumed.

(5) If the boxing contestant fails to enter the ring before the count of ten, the contestant shall be considered knocked out.

(6) When a contestant has accidentally slipped or fallen through the ropes, the contestant shall have 20 seconds to return to the ring.

R359-1-618. Boxing - Scoring.

(1) Officials who score a boxing contest shall use the 10-point must system.

(2) For the purpose of this Rule, the "10-point must system" means the winner of each round received ten points as determined by clean hitting, effective aggressiveness, defense, and ring generalship. The loser of the round shall receive less than ten points. If the round is even, each boxing contestant shall receive not less than ten points. No fraction of points may be given.

(3) Officials who score the contest shall mark their cards in ink or in indelible pencil at the end of each round.

(4) Officials who score the contest shall sign their scorecards.

(5) When a contest is scored on the individual score sheets for each round, the referee shall, at the end of each round, collect the score sheet for the round from each judge and shall give the score sheets to the designated Commission member for computation.

(6) Referees and judges shall be discreet at all times and shall not discuss their decisions with anyone during a contest.

(7) A decision that is rendered at the termination of a boxing contest shall not be changed without a hearing, unless it is determined that the computation of the scorecards of the referee and judges shows a clerical or mathematical error giving the decision to the wrong contestant. If such an error is found, the Commission may change the decision.

(8) After a contest, the scorecards collected by the designated Commission member shall be maintained by the Commission.

(9) If a referee becomes incapacitated, a time-out shall be called and the other referee who is assigned to the contest shall assume the duties of the referee.

(10) If a judge becomes incapacitated and is unable to complete the scoring of a contest, a time-out shall be called and an alternate licensed judge shall immediately be assigned to score the contest from the point at which he assumed the duties of a judge. If the incapacity of a judge is not noticed during a round, the referee shall score that round and the substitute judge shall score all subsequent rounds.

R359-1-619. Boxing - Seconds.

(1) A boxing contestant shall not have more than four seconds, one of whom shall be designated as the chief second. The chief second shall be responsible for the conduct in the corner during the course of a contest. During the rest period, one second shall be allowed inside the ring, two seconds shall be allowed on the apron and one second shall be allowed on the floor.

(2) All seconds shall remain seated during the round.

(3) A second shall not spray or throw water on a boxing contestant during a round.

(4) A boxing contestant's corner shall not heckle or in any manner annoy the contestant's opponent or the referee, or throw any object into the ring.

(5) A second shall not enter the ring until the timekeeper has indicated the end of a round.

(6) A second shall leave the ring at the timekeeper's whistle and shall clear the ring platform of all obstructions at the sound of the gong indicating the beginning of a round. Articles shall not be placed on the ring floor until the round has ended or the contest has terminated.

(7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R359-1-609(6) and R359-1-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.

(8) A second may indicate to the referee that the second's boxing contestant cannot continue and that the contest should be stopped. Only verbal notification or hand signals may be used; the throwing of a towel into the ring does not indicate the defeat of the second's boxing contestant.

(9) A second shall not administer alcoholic beverages, narcotics, or stimulants to a contestant, pour excessive water on the body of a contestant, or place ice in the trunks or protective cup of a contestant during the progress of a contest.

R359-1-620. Boxing - Managers.

A manager shall not sign a contract for the appearance of a boxing contestant if the manager does not have the boxing contestant under contract.

R359-1-621. Boxing. Identification - Photo Identification Cards.

(1) Each boxing contestant shall provide two pieces of identification to the designated Commission member before participation in a fight. One of the pieces of identification shall be a recent photo identification card issued or accepted by the Commission at the time the boxing contestant receives his original license.

(2) The photo identification card shall contain the following information:

(a) the contestant's name and address;
(b) the contestant's social security number;
(c) the personal identification number assigned to the

contestant by a boxing registry;

(d) a photograph of the boxing contestant; and

(e) the contestant's height and weight.

(3) The Commission shall honor similar photo identification cards from other jurisdictions.

(4) Unless otherwise approved by the Commission, a boxing contestant will not be allowed to compete if his or her photo identification card is incomplete or if the boxing contestant fails to present the photo identification card to the designated Commission member prior to the bout.

R359-1-622. Boxing - Dress for Contestants.

(1) Boxing contestants shall be required to wear the following:

(a) trunks that are belted at the contestant's waistline. For the purposes of this Subsection, the waistline shall be defined as an imaginary horizontal line drawn through the navel to the top of the hips. Trunks shall not have any buckles or other ornaments on them that might injure a boxing contestant or referee;

(b) a foul-proof protector for male boxing contestants and a pelvic area protector and breast protector for female boxing contestants;

(c) shoes that are made of soft material without spikes, cleats, or heels;

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R359-1-604.

(2) In addition to the clothing required pursuant to Subsections R359-1-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

(3) A boxing contestant's hair shall be cut or secured so as not to interfere with the contestant's vision.

(4) A boxing contestant shall not wear corrective lenses other than soft contact lenses into the ring. A bout shall not be interrupted for the purposes of replacing or searching for a soft contact lens.

R359-1-623. Boxing - Failure to Compete.

A boxing contestant's manager shall immediately notify the Commission if the contestant is unable to compete in a contest due to illness or injury. A physician may be selected as approved by the Commission to examine the contestant.

R359-1-701. Elimination Tournaments.

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R359-1 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the sport. Upon requesting the Commission's approval of an elimination tournament in this State, the sponsoring organization or promoter of an elimination tournament may submit the official rules for the particular sport to the Commission and request the Commission to apply the official rules in the contest.

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-702. Restrictions on Elimination Tournaments.

Elimination tournaments shall comply with the following restrictions:

(1) An elimination tournament must begin and end within a period of 48 hours.

(2) All matches shall be scheduled for no more than three rounds. A round must be one minute in duration.

(3) A contestant shall wear 16 oz. boxing gloves, training headgear, a mouthpiece and a large abdominal groin protector during each match.

(4) A contestant may participate in more than one match, but a contestant shall not compete more than a total of 12 rounds.

(5) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of contestants, a physical examination on each contestant, conducted by a physician not more than 60 days prior to the elimination tournament in a form provided by the Commission, certifying that the contestant is free from any physical or mental condition that indicates the contestant should not engage in activity as a contestant.

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R359-1-507 of this Rule and Subsection 63C-11-317(1).

(7) The Commission may impose additional restrictions in advance of an elimination tournament.

R359-1-801. Martial Arts Contests and Exhibitions.

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 63C, Chapter 11, and Rule R359-1 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the art. Upon requesting the Commission's approval of a contest or exhibition of a martial art in this State, the sponsoring organization or promoter may submit the official rules for the particular art to the Commission and request the Commission to apply the official rules in the contest or exhibition.

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

R359-1-802. Martial Arts Contest Weights and Classes.

Martial Arts Contest Weights and Classes:

(a) flyweight is up to and including 125 lbs. (56.82 kgs.);

(b) bantamweight is over 125 lbs. (56.82 kgs.) to 135 lbs. (61.36 kgs.);

(c) featherweight is over 135 lbs (61.36 kgs.) to 145 lbs. (65.91 kgs.);

(d) lightweight is over 145 lbs. (65.91 kgs.) to 155 lbs. (70.45 kgs.);

(e) welterweight is over 155 lbs. (70.45 kgs.) to 170 lbs. (77.27 kgs.);

(f) middleweight is over 170 lbs. (77.27 kgs.) to 185 lbs. (84.09 kgs.);

(g) light-heavyweight is over 185 lbs. (84.09 kgs.) to 205 lbs. (93.18 kgs.);

(h) heavyweight is over 205 lbs. (93.18 kgs.) to 265 lbs. (120.45 kgs.); and

(i) super heavyweight is over 265 lbs. (120.45 kgs.).

R359-1-901. "White-Collar Contests".

Pursuant to Section 63C-11-302 (26), the Commission adopts the following rules for "White-Collar Contests":

(1) Contestants shall be at least 21 years old on the day of the contest.

(2) Competing contestants shall be of the same gender.

(3) The heaviest contestant's weight shall be no greater than 15 percent more than their opponent.

(4) A ringside physician (M.D. or D.O) must be present at the ringside or cageside during each bout and emergency medical response must be within 5 minutes to the training center venue.

(5) Ticket sales, admission fees and/or donations are prohibited.

(6) Concession sales are prohibited.

(7) No more than 4 bouts at an event on a single day are permitted.

(8) Knee strikes to the head to a standing or grounded opponent are prohibited.

(9) Elbow, forearm and triceps strikes to a standing or grounded opponent are prohibited.

(10) Strikes to the head of a grounded opponent are prohibited.

(11) All twisting leg submissions are prohibited.

(12) All spine attacks, including spine strikes and locks are prohibited.

(13) All neck attacks, including strikes, chokes and cranks are prohibited.

(14) Linear kicks to and around the knee joint are prohibited.

(15) Dropping your opponent on his or her head or neck at any time is prohibited.

(16) Medical insurance coverage for each contest participant that meets the requirements of R359-1-501(10) shall be provided at no expense to the contest participant.

(17) Full legal names, birthdates and addresses of all contestants shall be provided to the commission no later than 72 hours before the scheduled event.

R359-1-1001. Authority - Purpose.

These rules are adopted to enable the Commission to implement the provisions of Section 63C-11-311 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

R359-1-1002. Definitions.

Pursuant to Section 63C-11-311, the Commission adopts the following definitions:

(1) For purposes of Subsection 63C-11-311, "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

(2) "Applicant" means an Organization Which Promotes Amateur Boxing in the State as defined in this section.

(3) "Grant" means the Commission's distribution of monies as authorized under Section 63C-11-311(3).

(4) "Organization Which Promotes Amateur Boxing in the State" means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

(5) "State Fiscal Year" means the annual financial reporting period of the State of Utah, beginning July 1 and ending June 30.

R359-1-1003. Qualifications for Applications for Grants for Amateur Boxing.

(1) In accordance with Section 63C-11-311, each applicant for a grant shall:

(a) submit an application in a form prescribed by the Commission;

(b) provide documentation that the applicant is an "organization which promotes amateur boxing in the State";

(c) Upon request from the Commission, document the following:

(i) the financial need for the grant;

(ii) how the funds requested will be used to promote amateur boxing; and

(iii) receipts for expenditures for which the applicant requests reimbursement.

(2) Reimbursable Expenditures - The applicant may request reimbursement for the following types of eligible expenditures:

(a) costs of travel, including meals, lodging and transportation associated with participation in an amateur boxing contest for coaches and contestants;

(b) Maintenance costs; and

(c) Equipment costs.

(3) Eligible Expenditures - In order for an expenditure to be eligible for reimbursement, an applicant must:

(a) submit documentation supporting such expenditure to the Commission showing that the expense was incurred during the State Fiscal Year at issue; and

(b) submit such documentation no later than June 30 of the current State Fiscal Year at issue.

(4) the Commission will review applicants and make a determination as to which one(s) will best promote amateur boxing in the State of Utah.

R359-1-1004. Criteria for Awarding Grants.

The Commission may consider any of the following criteria in determining whether to award a grant:

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 63C-11-311;

(2) the applicant's past participation in amateur boxing contests;

(3) the scope of the applicant's current involvement in amateur boxing;

(4) demonstrated need for the funding; or

(5) the involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

KEY: licensing, boxing, unarmed combat, white-collar contests
January 31, 2011 63C-11-101 et seq.
Notice of Continuation May 10, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective October 1, 2010. It also incorporates by reference State Plan Amendments that become effective no later than October 1, 2010.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, October 1, 2010, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective October 1, 2010.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

(2) An alien who is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible

residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

(1) An enrollee is responsible to pay the:

(a) hospital a $220 coinsurance per year;

(b) hospital a $6 copayment for each non-emergency use of hospital emergency services;

(c) provider a $3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

(d) pharmacy a $3 copayment per prescription up to a maximum of $15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is $100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

(a) children;

(b) pregnant women;

(c) institutionalized individuals;

(d) American Indians; and

(e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

KEY: Medicaid

January 19, 2011	**26-1-5**
Notice of Continuation April 16, 2007	**26-18-3**
	26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

(1) Aged;
(2) Blind;
(3) Disabled;
(4) Family;
(5) Institutional;
(6) Transitional;
(7) Child;
(8) Refugee;
(9) Prenatal and Newborn;
(10) Pregnant Women;
(11) Community Supports Waiver for Home and Community Based Services;
(12) Aging Home and Community Based Services Waiver;
(13) Technologically Dependent Child Waiver/Travis C. Waiver;
(14) Brain Injury Home and Community Based Services Waiver;
(15) Physical Disabilities Waiver; and
(16) Cancer Program.

R414-303-2. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.

(2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, 2009 ed., which are incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2009, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2009, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts the disability determination requirements described in 42 CFR 435.541, 2009 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, 416.1015(a) through (e), and 416.1016, 2009 ed., which are incorporated by reference, to decide if an individual is disabled. The Department notifies the Medicaid eligibility agency of its disability decision, who then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-6.

(a) The individual may provide the Medicaid eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Medicaid eligibility agency notifies the individual of the reconsideration decision. Thereafter, the individual may choose to pursue or abandon the fair hearing.

(5) If the Medicaid eligibility agency denies an individual's Medicaid application because the Medicaid Disability Review Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the Medicaid eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2009, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2009, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2009, for a given year, or as subsequently authorized by Congress. The Medicaid eligibility agency will deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid Coverage groups.

(2) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2003 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

(3) For unemployed two-parent households, the Department does not require the primary wage earner to have an employment history.

(4) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following applies to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in a 1931 Family Medicaid household, the child must be included in the 1931 FM eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) $90 will be deducted from the monthly gross earned income for each employed person.

(iii) The $30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be $200.00 per child under age two, and $175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is $160.00 per child under age two, and $140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative?s household.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-5. 12 Month Transitional Family Medicaid.

The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2).

R414-303-6. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-7. Foster Care and Independent Foster Care Adolescents.

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-8. Subsidized Adoptions.

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

R414-303-9. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-10. Refugee Medicaid.

(1) The Department provides medical assistance to refugees in accordance with the provisions of 45 CFR 400.90 through 400.107 and 45 CFR, Part 401.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

(7) The Department provides medical assistance to Iraqi and Afghan Special Immigrants in the same manner as medical assistance provided to other refugees.

R414-303-11. Prenatal and Newborn Medicaid.

(1) The Department incorporates by reference Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47), 1902(e)(4) and (5) and 1902(l), in effect January 1, 2009, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-declaration that she meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider has verified that she is pregnant and determines, based on preliminary information, that the woman:

(a) meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(c) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(10) At the initial determination of eligibility for Prenatal Medicaid, the agency determines the applicant's countable resources using SSI resource methodologies. Applicants for Prenatal Medicaid whose countable resources exceed $5,000 must pay four percent of countable resources to the agency to receive Prenatal Medicaid. The maximum payment amount is $3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2009.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

(11) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

(12) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, without regard to whether the infant remains in the birth mother's home or whether the birth mother would continue to be eligible for Medicaid, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3. The infant must continue to be a Utah resident to receive coverage.

(13) Children who meet the criteria under the Social Security Act, Section 1902(l)(1)(D) may qualify for the newborn program through the month in which they turn 19. The agency deems the parent's income and resources to the 18-year old to determine eligibility when the 18-year old lives in the parent's home. An 18-year old who does not live with a parent may apply on his own, in which case the agency does not deem income or resources from the parent.

R414-303-12. Pregnant Women Medicaid.

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

R414-303-13. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-14. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility

shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to $125.

R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-17. Physical Disabilities Waiver.

(1) The Department adopts 42 CFR 435.726, 435.832 and 435.217, 2006 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2005, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to become eligible. To determine the spenddown amount, the income rules for non-institutionalized aged, blind or disabled individuals in R414-304 apply except that income is not deemed from the client's spouse.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

(9) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by the Deficit Reduction Act of 2005, Pub. L. 109-171.

(a) That limit is the minimum level allowed under the Deficit Reduction Act of 2005, Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver or nursing home services.

R414-303-18. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional

categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

KEY: income, coverage groups, independent foster care adolescent
January 27, 2011 26-18-3
Notice of Continuation January 25, 2008 26-1-5

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-7. Emergency Medical Services Prehospital Data System Rules.
R426-7-1. Authority and Purpose.

(1) This rule is established under Title 26 chapter 8a.

(2) The purpose of this rule is to establish minimum mandatory EMS data reporting requirements.

R426-7-2. Definitions.

As used in this rule:

(1) "Emergency Medical Services Provider" means:

(a) a licensed ground or air ambulance provider; or

(b) a designated first responder.

(2) "EMS Incident" means an instance in which an Emergency Medical Services Provider is requested to provide emergency medical services, including a mutual aid request, and which results in:

(a) a 911 response;

(b) an inter-facility transport;

(c) patient refusal of care;

(d) no care needed;

(e) a cancelled response; or

(f) an instance where no patient is found.

(3) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

R426-7-3. Prehospital Data Set.

(1) Emergency medical service providers shall collect data as identified by the Department in this rule.

(2) Emergency Medical Services Providers shall submit the data to the Department electronically in the National Emergency Medical Services Information System (NEMSIS) format. For Emergency Medical Services Providers directly using a reporting system provided by the Department, the data is considered submitted to the Department as soon as it has been entered or updated in the Department-provided system.

(3) Emergency Medical Services Providers shall submit NEMSIS Demographic data elements within 30 days after the end of each calendar quarter in the format defined in the NEMSIS EMSDemographicDataSet. Some data may change less frequently than quarterly, but Emergency Medical Services Providers shall submit all required data elements quarterly regardless of whether the data have changed.

(4) Emergency Medical Services Providers shall submit NEMSIS EMS incident data elements for each Patient Care Report within 30 days of the end of the month in which the EMS incident occurred, in the format defined in the NEMSIS EMSDataSet.

(5) If the Department determines that there are errors in the data, it may ask the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the supplier for corrections, the Emergency Medical Services Provider is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(6) The minimum required demographic data elements that must be reported under this rule include the following NEMSIS EMSDemographicDataSet elements:

D01_01 EMS Agency Number
D01_02 EMS Agency Name
D01_03 EMS Agency State
D01_04 EMS Agency County
D01_05 Primary Type of Service
D01_06 Other Types of Service
D01_07 Level of Service
D01_08 Organizational Type
D01_09 Organization Status
D01_10 Statistical Year
D01_11 Other Agencies In Area
D01_12 Total Service Size Area
D01_13 Total Service Area Population
D01_14 911 Call Volume per Year
D01_15 EMS Dispatch Volume per Year
D01_16 EMS Transport Volume per Year
D01_17 EMS Patient Contact Volume per Year
D01_18 EMS Billable Calls per Year
D01_19 EMS Agency Time Zone
D01_20 EMS Agency Daylight Savings Time Use
D01_21 National Provider Identifier
D02_01 Agency Contact Last Name
D02_02 Agency Contact Middle Name/Initial
D02_03 Agency Contact First Name
D02_04 Agency Contact Address
D02_05 Agency Contact City
D02_06 Agency Contact State
D02_07 Agency Contact Zip Code
D02_08 Agency Contact Telephone Number
D02_09 Agency Contact Fax Number
D02_10 Agency Contact Email Address
D02_11 Agency Contact Web Address
D03_01 Agency Medical Director Last Name
D03_02 Agency Medical Director Middle Name/Initial
D03_03 Agency Medical Director First Name
D03_04 Agency Medical Director Address
D03_05 Agency Medical Director City
D03_06 Agency Medical Director State
D03_07 Agency Medical Director Zip Code
D03_08 Agency Medical Director Telephone Number
D03_09 Agency Medical Director Fax Number
D03_10 Agency Medical Director's Medical Specialty
D03_11 Agency Medical Director Email Address
D04_01 State Certification Licensure Levels
D04_02 EMS Unit Call Sign
D04_04 Procedures
D04_05 Personnel Level Permitted to Use the Procedure
D04_06 Medications Given
D04_07 Personnel Level Permitted to Use the Medication
D04_08 Protocol
D04_09 Personnel Level Permitted to Use the Protocol
D04_10 Billing Status
D04_11 Hospitals Served
D04_13 Other Destinations
D04_15 Destination Type
D04_17 EMD Vendor
D05_01 Station Name
D05_02 Station Number
D05_03 Station Zone
D05_04 Station GPS
D05_05 Station Address
D05_06 Station City
D05_07 Station State
D05_08 Station Zip
D05_09 Station Telephone Number
D06_01 Unit/Vehicle Number
D06_03 Vehicle Type
D06_07 Vehicle Model Year
D07_02 State/Licensure ID Number
D07_03 Personnel's Employment Status
D08_01 EMS Personnel's Last Name
D08_03 EMS Personnel's First Name

(7) The minimum required Patient Care Report data elements that must be reported under this rule include the following NEMSIS EMSDataSet elements:

E01_01 Patient Care Report Number
E01_02 Software Creator

E01_03 Software Name
E01_04 Software Version
E02_01 EMS Agency Number
E02_02 Incident Number
E02_04 Type of Service Requested
E02_05 Primary Role of the Unit
E02_06 Type of Dispatch Delay
E02_07 Type of Response Delay
E02_08 Type of Scene Delay
E02_09 Type of Transport Delay
E02_10 Type of Turn-Around Delay
E02_12 EMS Unit Call Sign (Radio Number)
E02_20 Response Mode to Scene
E03_01 Complaint Reported by Dispatch
E03_02 EMD Performed
E04_01 Crew Member ID
E05_01 Incident or Onset Date/Time
E05_02 PSAP Call Date/Time
E05_03 Dispatch Notified Date/Time
E05_04 Unit Notified by Dispatch Date/Time
E05_05 Unit En Route Date/Time
E05_06 Unit Arrived on Scene Date/Time
E05_07 Arrived at Patient Date/Time
E05_08 Transfer of Patient Care Date/Time
E05_09 Unit Left Scene Date/Time
E05_10 Patient Arrived at Destination Date/Time
E05_11 Unit Back in Service Date/Time
E05_12 Unit Cancelled Date/Time
E05_13 Unit Back at Home Location Date/Time
E06_01 Last Name
E06_02 First Name
E06_03 Middle Initial/Name
E06_04 Patient's Home Address
E06_05 Patient's Home City
E06_06 Patient's Home County
E06_07 Patient's Home State
E06_08 Patient's Home Zip Code
E06_09 Patient's Home Country
E06_10 Social Security Number
E06_11 Gender
E06_12 Race
E06_13 Ethnicity
E06_14 Age
E06_15 Age Units
E06_16 Date of Birth
E06_17 Primary or Home Telephone Number
E07_01 Primary Method of Payment
E07_15 Work-Related
E07_16 Patient's Occupational Industry
E07_17 Patient's Occupation
E07_34 CMS Service Level
E07_35 Condition Code Number
E08_05 Number of Patients at Scene
E08_06 Mass Casualty Incident
E08_07 Incident Location Type
E08_11 Incident Address
E08_12 Incident City
E08_13 Incident County
E08_14 Incident State
E08_15 Incident ZIP Code
E09_01 Prior Aid
E09_02 Prior Aid Performed by
E09_03 Outcome of the Prior Aid
E09_04 Possible Injury
E09_05 Chief Complaint
E09_06 Duration of Chief Complaint
E09_07 Time Units of Duration of Chief Complaint
E09_11 Chief Complaint Anatomic Location
E09_12 Chief Complaint Organ System
E09_13 Primary Symptom
E09_14 Other Associated Symptoms
E09_15 Providers Primary Impression
E09_16 Provider's Secondary Impression
E10_01 Cause of Injury
E10_02 Intent of the Injury
E10_03 Mechanism of Injury
E10_04 Vehicular Injury Indicators
E10_05 Area of the Vehicle impacted by the collision
E10_06 Seat Row Location of Patient in Vehicle
E10_07 Position of Patient in the Seat of the Vehicle
E10_08 Use of Occupant Safety Equipment
E10_09 Airbag Deployment
E10_10 Height of Fall
E11_01 Cardiac Arrest
E11_02 Cardiac Arrest Etiology
E11_03 Resuscitation Attempted
E11_04 Arrest Witnessed by
E11_05 First Monitored Rhythm of the Patient
E11_06 Any Return of Spontaneous Circulation
E11_08 Estimated Time of Arrest Prior to EMS Arrival
E11_10 Reason CPR Discontinued
E12_01 Barriers to Patient Care
E12_08 Medication Allergies
E12_14 Current Medications
E12_18 Presence of Emergency Information Form
E12_19 Alcohol/Drug Use Indicators
E12_20 Pregnancy
E13_01 Run Report Narrative
E14_01 Date/Time Vital Signs Taken
E14_02 Obtained Prior to this Units EMS Care
E14_03 Cardiac Rhythm
E14_04 SBP (Systolic Blood Pressure)
E14_05 DBP (Diastolic Blood Pressure)
E14_07 Pulse Rate
E14_09 Pulse Oximetry
E14_10 Pulse Rhythm
E14_11 Respiratory Rate
E14_14 Blood Glucose Level
E14_15 Glasgow Coma Score-Eye
E14_16 Glasgow Coma Score-Verbal
E14_17 Glasgow Coma Score-Motor
E14_18 Glasgow Coma Score-Qualifier
E14_19 Total Glasgow Coma Score
E14_20 Temperature
E14_22 Level of Responsiveness
E14_24 Stroke Scale
E14_26 APGAR
E14_27 Revised Trauma Score
E14_28 Pediatric Trauma Score
E15_01 NHTSA Injury Matrix External/Skin
E15_02 NHTSA Injury Matrix Head
E15_03 NHTSA Injury Matrix Face
E15_04 NHTSA Injury Matrix Neck
E15_05 NHTSA Injury Matrix Thorax
E15_06 NHTSA Injury Matrix Abdomen
E15_07 NHTSA Injury Matrix Spine
E15_08 NHTSA Injury Matrix Upper Extremities
E15_09 NHTSA Injury Matrix Pelvis
E15_10 NHTSA Injury Matrix Lower Extremities
E15_11 NHTSA Injury Matrix Unspecified
E16_01 Estimated Body Weight
E16_02 Broselow/Luten Color
E16_03 Date/Time of Assessment
E16_04 Skin Assessment
E16_05 Head/Face Assessment
E16_06 Neck Assessment
E16_07 Chest/Lungs Assessment
E16_08 Heart Assessment

E16_09 Abdomen Left Upper Assessment
E16_10 Abdomen Left Lower Assessment
E16_11 Abdomen Right Upper Assessment
E16_12 Abdomen Right Lower Assessment
E16_13 GU Assessment
E16_14 Back Cervical Assessment
E16_15 Back Thoracic Assessment
E16_16 Back Lumbar/Sacral Assessment
E16_17 Extremities-Right Upper Assessment
E16_18 Extremities-Right Lower Assessment
E16_19 Extremities-Left Upper Assessment
E16_20 Extremities-Left Lower Assessment
E16_21 Eyes-Left Assessment
E16_22 Eyes-Right Assessment
E16_23 Mental Status Assessment
E16_24 Neurological Assessment
E18_01 Date/Time Medication Administered
E18_02 Medication Administered Prior to this Units EMS Care
E18_03 Medication Given
E18_04 Medication Administered Route
E18_05 Medication Dosage
E18_06 Medication Dosage Units
E18_07 Response to Medication
E18_08 Medication Complication
E18_09 Medication Crew Member ID
E18_10 Medication Authorization
E19_01 Date/Time Procedure Performed Successfully
E19_03 Procedure
E19_04 Size of Procedure Equipment
E19_05 Number of Procedure Attempts
E19_06 Procedure Successful
E19_07 Procedure Complication
E19_08 Response to Procedure
E19_09 Procedure Crew Members ID
E19_10 Procedure Authorization
E19_12 Successful IV Site
E19_13 Tube Confirmation
E19_14 Destination Confirmation of Tube Placement
E20_01 Destination/Transferred To, Name
E20_03 Destination Street Address
E20_04 Destination City
E20_05 Destination State
E20_06 Destination County
E20_07 Destination Zip Code
E20_10 Incident/Patient Disposition
E20_14 Transport Mode from Scene
E20_15 Condition of Patient at Destination
E20_16 Reason for Choosing Destination
E20_17 Type of Destination
E22_01 Emergency Department Disposition
E22_02 Hospital Disposition
E23_03 Personal Protective Equipment Used
E23_09 Research Survey Field
E23_10 Who Generated this Report?
E23_11 Research Survey Field Title

(8) Emergency Medical Services Providers shall use elements E23_09 and E23_11 to report biosurveillance indicators. When any of the following indicators are present in an incident, the Emergency Medical Services Provider shall provide an instance of E23_09 and E23_11, with E23_09 set to "true" and E23_11 set to one of the following:

B01_01 Abdominal Pain
B01_02 Altered Level of Consciousness
B01_03 Apparent Death
B01_04 Bloody Diarrhea
B01_05 Fever
B01_06 Headache
B01_07 Inhalation
B01_08 Rash/Blistering
B01_09 Nausea/Vomiting
B01_10 Paralysis
B01_11 Respiratory Arrest
B01_12 Respiratory Distress
B01_13 Seizures

(9) Emergency Medical Services Providers are not required to submit other NEMSIS data elements but may optionally do so. Emergency Medical Services Providers may also use additional instances of E23_09 and E23_11 for their own purposes.

(10) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, each responding emergency medical services provider unit that cared for the patient during the incident shall provide a report of patient status, containing information critical to the ongoing care of the patient, to the receiving facility within one hour after the patient arrives at the receiving facility in at least one of the following formats:

(a) NEMSIS XML; or
(b) Paper form.

(11) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, the receiving facility shall provide at least the following information to each Emergency Medical Services Provider that cared for the patient, upon request by the Emergency Medical Services Provider:

(a) the patient's emergency department disposition; and
(b) the patient's hospital disposition.

R426-7-4. ED Data Set.

(1) All hospitals licensed in Utah shall provide patient data as identified by the Department.

(2) This data shall be submitted at least quarterly to the Department. Corporate submittal is preferred.

(3) The data must be submitted in an electronic format determined and approved by the Department.

(4) If the Department determines that there are errors in the data, it may return the data to the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the hospital for corrections, the hospital is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(5) The minimum required data elements include:

Unique Patient Control Number
Record Type
Provider Identifier (hospital)
Patient Social Security Number
Patient Control Number
Type of Bill
Patient Name
Patient's Address (postal zip code)
Patient Date of Birth
Patient's Gender
Admission Date
Admission Hour
Discharge Hour
Discharge Status
Disposition from Hospital
Patient's Medical Record Number
Revenue Code 1 ("001" sum of all charges)
Total Charges by Revenue Code 1 ("001" last total Charge Field, is sum)
Revenue Code 2 ("450" used for record selection)
Total Charges by Revenue Code 2 (Charges associated with code 450)
Primary Payer Identification
Estimated Amount Due

Secondary Payer Identification
Estimated Amount Due
Tertiary Payer Identification
Estimated Amount Due
Patient Estimated Amount Due
Principal Diagnosis Code
Secondary Diagnosis Code 1
Secondary Diagnosis Code 2
Secondary Diagnosis Code 3
Secondary Diagnosis Code 4
Secondary Diagnosis Code 5
Secondary Diagnosis Code 6
Secondary Diagnosis Code 7
Secondary Diagnosis Code 8
External Cause of Injury Code (E-Code)
Procedure Coding Method Used
Principal Procedure
Secondary Procedure 1
Secondary Procedure 2
Secondary Procedure 3
Secondary Procedure 4, and
Secondary Procedure 5

R426-7-5. Penalty for Violation of Rule.

As required by Section 63G-3-201(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a penalty as provided in Section 26-23-6.

KEY: emergency medical services
March 15, 2010 28-8a
Notice of Continuation January 12, 2011

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-8. Emergency Medical Services Per Capita Grants Program Rules.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26 chapter 8a.

(2) The purpose of this rule provides guidelines for the equitable distribution of per capita grant funds specified under the Emergency Medical Services (EMS) Grants Program.

R426-8-2. Definitions.

(1) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS.

(2) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS.

R426-8-3. Eligibility.

(1) Per capita grants are available only to licensed EMS ambulance services, paramedic services, EMS designated first response units and EMS dispatch providers that are either:

(a) agencies or political subdivisions of local or state government or incorporated non-profit entities; or

(b) for-profit EMS providers that are the primary EMS provider for a service area.

(2)(a) A for-profit EMS provider is a primary EMS provider in a geographical service area if it is licensed for and provides service at a higher level than the public or non-profit provider;

(b) The levels of EMS providers are in this rank order:

(A) Paramedic rescue;

(B) Paramedic ambulance;

(C) EMT-Intermediate;

(D) EMT-IV; and

(E) EMT-Basic.

(c) Paramedic interfacility transfer ambulance, EMT-Interfacility ambulance transport, or paramedic tactical rescue units are not eligible for per capita funding because they cannot be the primary EMS provider for a geographical service area.

(3) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

(4) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

R426-8-4. Grant Implementation.

(1) Per Capita grants are available for use specifically related to the provision of EMS.

(2) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(3) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(4) No matching funds are required for per capita grants.

(5) Per capita funds may be used as matching funds for competitive grants.

R426-8-5. Application and Award Formula.

(1) Grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.

(2) Agency applicants shall certify agency personnel rosters as part of the grant application process.

(a) A certified individual who works for both a public and a for-profit agency may be credited only to the public or non-profit licensee or designee.

(b) Certified individuals may be credited for only one agency. However, if a dispatcher is also an EMT, EMT-I, EMT-IA, or paramedic, the dispatcher may be credited to one agency as a dispatcher and one agency as an EMT, EMT-I, EMT-IA, or paramedic.

(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.

(3) The Department shall allocate funds by using the following point totals for agency-certified personnel: certified Dispatchers = 1; certified Basic EMTs = 2; certified Intermediate EMTs and Intermediate-Advanced EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated EMS dispatch agency and designated EMS first response unit as a date as specified by the Department immediately prior to the grant year, which begins July 1. To comply with Legislative intent, the point totals of each eligible agency will be multiplied by the current county classification as provided under Section 17-50-501.

KEY: emergency medical services
August 3, 2010 26-8a
Notice of Continuation January 5, 2011

R501. Human Services, Administration, Administrative Services, Licensing.
R501-21. Outpatient Treatment Programs.
R501-21-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing, shall license outpatient treatment programs according to the following rules.

R501-21-2. Purpose.

Outpatient treatment programs shall serve consumers who require less structure than offered in day treatment or residential treatment programs. Consumers are provided treatment as often as determined and noted in the treatment plan.

R501-21-3. Definition.

Outpatient treatment program means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment in accordance with Subsection 62A-2-101(12).

R501-21-4. Administration.

A. In addition to the following rules, all Outpatient Treatment Programs shall comply with R501-2, Core Standards.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-21-5. Staffing.

Professional staff shall include at least one of the following individuals who has received training in the specific area listed below:

A. Mental Health

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. If unlicensed staff are used, they shall not supervise clinical programs. Unlicensed staff shall be trained to work with psychiatric consumers and be supervised by a licensed clinical professional.

B. Substance Abuse

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. A licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.
6. Opioid outpatient treatment programs shall have a licensed physician who is an American Society of Addiction Medicine certified physician or who can document specific training in methadone treatment for opioid addictions or who can document specific training or experience in methadone treatment for opioid addictions. Physicians prescribing buprenorphine must show proof of completion of 8 hour federally required physician training.

C. Children and Youth

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. If the following individuals are used they shall not supervise clinical programs: A person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or a second year graduate student training for one of the above degrees.

D. Domestic Violence

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed clinical social worker, or
4. a licensed marriage and family therapist, or
5. a licensed professional counselor, or
6. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or
7. a person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or
8. a second year graduate student in training for one of the above degrees, or
9. a licensed social services worker with at least three years of continual, full time, related experience, when practicing under the direction and supervision of a licensed clinical professional.
10. Individuals from categories 7. and 8. above shall not supervise clinical programs. Individuals in category i. above shall not supervise clinical programs, and may only co-facilitate group therapy sessions with a person qualified per paragraphs 1. through 6. above.

R501-21-6. Direct Service.

A. Treatment plans shall be developed based on assessment and evaluation of individual consumer needs. The treatment may be consultive and may include medication management.

B. Treatment plans shall be reviewed and signed by a licensed clinical professional as frequently as determined in the treatment plan.

C. Except for Domestic Violence, individual, group, couple, or family counseling sessions shall be provided to the consumer as frequently as determined in the treatment plan. In the consumer's record and in the progress notes, the date of the session and the provider shall be documented. Treatment sessions may be provided less frequently than once a month if approved by the clinical supervisor and justified in the consumer record.

D. Domestic violence treatment programs shall comply with generally accepted practices in the current domestic violence literature and the following requirements:

1. Maintain and document cooperative working relationships with domestic violence shelters, treatment programs, referring agencies, custodial parents when the consumer is a minor and local domestic violence coalitions. If the consumer is a perpetrator, contact with victims, current partner, and the criminal justice referring agencies is also required, as appropriate.
2. Treatment sessions for each perpetrator, not including orientation and assessment interviews, shall be provided for at least one hour per week for a minimum of sixteen weeks. Treatment sessions for children and victims shall offer a minimum of 10 sessions for each consumer not including intake or orientation.
3. Staff to Consumer Ratio:

a. The staff to consumer ratio in adult treatment groups shall be one to eight for a one hour long group or one to ten for an hour and a half long group. The maximum group size shall not exceed sixteen.

b. Child victim or child witness groups shall have a ratio of one staff to eight children when the consumers are under twelve years of age, and a one staff to ten children ratio when

the consumers are twelve years of age or older.

c. When any consumer enters a treatment program the staff shall conduct an in-depth, face to face interview and assessment to determine the consumer's clinical profile and treatment needs. For perpetrator consumers, additional information shall be obtained from the police incident report, perpetrator's criminal history, prior treatment providers, and the victim. When appropriate, additional information for child consumers shall be obtained from parents, prior treatment providers, schools and Child Protective Services. When any of the above information cannot be obtained the reason shall be documented. The assessment shall include the following:

1) a profile of the frequency, severity and duration of the domestic violence behavior, which includes a summary of psychological violence,

2) documentation of any homicidal, suicidal ideation and intentions as well as abusive behavior toward children,

3) a clinical diagnosis and a referral for evaluation to determine the need for medication if indicated,

4) documentation of safety planning when the consumer is an adult victim, child victim, or child witness, and that they have contact with the perpetrator. For victims who choose not to become treatment consumers, safety planning shall be addressed when they are contacted, and

5) documentation that appropriate measures have been taken to protect children from harm.

4. Consumers deemed appropriate for a domestic violence treatment program shall have an individualized treatment plan, which addresses all relevant treatment issues. Consumers who are not deemed appropriate for domestic violence programs shall be referred to the appropriate resource, with the reasons for referral documented and notification given to the referring agency. Domestic violence counseling shall be provided when appropriate, concurrently with or after other necessary treatment.

5. Conjoint or group therapy sessions with victims and perpetrators together or with both co-perpetrators shall not be provided until a comprehensive assessment has been completed to determine that the violence has stopped and that conjoint treatment is appropriate. The perpetrator must complete a minimum of 12 domestic violence treatment sessions prior to implementing conjoint therapy.

6. A written procedure shall be implemented to facilitate the following in an efficient and timely manner:

a. entry of the court ordered defendant into treatment,

b. notification of consumer compliance, participation or completion,

c. disposition of non-compliant consumers,

d. notification of the recurrence of violence, and

e. notification of factors which may exacerbate an individual's potential for violence.

7. Comply with the "Duty to Warn," Section 78B-3-502.

8. Document specialized training in domestic violence assessment and treatment practices including 24 hours of pre-service training within the last two years and 16 hours of training annually thereafter for all individuals providing treatment services.

9. Clinical supervision for treatment staff who are not clinically licensed shall consist of a minimum of an hour a week to discuss clinical dynamics of cases.

E. Opioid outpatient treatment programs shall:

1. Admit consumers to the program and dispense medications only after the completion of a face to face visit with a licensed practitioner having authority to prescribe controlled substances who confirms the opioid dependence. A licensed practitioner having authority to prescribe controlled substances must conduct a face to face visit for every subsequent dose increase.

2. Assure all consumers see the physician at least once yearly.

3. Require all consumers admitted to the program to participate in random, observed drug testing. Drug testing will be performed by the program minimally, 2 times per month for the first 3 months of treatment, and monthly thereafter, except for a consumer whose lack of progress shall require more frequent drug testing for a longer period of time.

4. Require consumers to participate in counseling sessions at least 1 hour per week for the first 90 days. Upon successful completion of this phase of treatment, consumers shall be required to participate in counseling 2 hours per month for the next 6 months. Upon successful completion of 9 months of treatment, consumers shall be seen at least monthly thereafter until discharge. Exceptions to this requirement must be approved in writing by the Division of Substance Abuse and Mental Health.

5. Maintain a staff to consumer ratio of:

a. 1 counselor to every 50 consumers.

b. 1 hour of physician time at the program site each month for every 10 consumers enrolled.

c. 1 FTE nurse to dispense medications for every 150 consumers dosing on an average daily basis.

6. Comply with R523-21-1 Rules Governing Methadone Providers.

R501-21-7. Physical Environment.

A. The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations, and
5. local health codes.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-21-8. Physical Facility.

A. Space shall be provided for private and group counseling sessions.

B. The program shall have storage for the following:

1. locked storage for medications, and

2. locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

C. Equipment

1. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer plans.

2. All furniture and equipment shall be maintained in a clean and safe condition.

D. Bathrooms

1. Bathrooms shall accommodate physically disabled consumers.

2. Each bathroom shall be maintained in good operating order and be properly equipped with toilet paper, towels, and soap.

3. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

KEY: human services, licensing, outpatient treatment programs
January 24, 2011 62A-2-101 et seq.
Notice of Continuation April 5, 2010

R510. Human Services, Aging and Adult Services.
R510-401. Utah Caregiver Support Program (UCSP).
R510-401-1. Utah Caregiver Support Program Purpose.

The Utah Caregiver Support Program is created under authority of the Older Americans Act of 1965 as amended in 2000 (PL 89-73) Part E - National Family Caregiver Support Program (NFCSP) and 2006 (PL 109-365) Subpart 1 - Caregiver Support Program.

The purpose of the program is to provide support services including information and assistance, counseling, support groups, respite and other home and community-based services to family caregivers of frail older individuals. The program also recognizes the needs of grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to children under the age of 18 years as well as to grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities. Adult family members (age 18 years of older) or other adult informal caregivers providing care to individuals of any age with Alzheimer's disease and related disorders are also served under this program|.

Operation of the program is a joint responsibility of the State Division of Aging and Adult Services and local Area Agencies on Aging (AAA). Funds are distributed by formula (R510-100-1) to local AAAs.

R510-401-2. Authority.

This Rule is authorized by 62A-3-104; 42 USC Section 3001.

R510-401-3. Definitions.

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency or Area Agency on Aging (AAA)" means the agency designated by the Division of Aging and Adult Services (DAAS) to coordinate and provide services for a defined geographical area.

(3) "Agency Director" means the director of the Agency.

(4) "Caregiver or Family Caregiver" means an adult family member, or another adult individual, who is an informal provider of in-home and community care to an older individual who is:

(a) 60 years of age or older; or is a

(b) caregiver 60 years of age or older who is caring for persons with mental retardation or related developmental disabilities; or is an

(c) adult family member (age 18 years or older) or other adult informal caregiver providing care to individuals of any age with Alzheimer's disease and related disorders; or is a

(d) grandparent 55 years of age or older individual who is a relative caregiver (not biological or adoptive parents) of a child not more than 18 years of age ; or is a

(e) grandparent and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities.

(f) This definition excludes agency and privately-paid supportive service providers.

(5) "Care Receiver" means an adult 60 years of age or older who receives assistance from, or is dependent upon, another for care and is:

(a) unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(b) due to a cognitive or other mental impairment, requires substantial supervision; or

(6) "Child" means an individual who is not more than 18 years of age or who is an individual with a disability.

(7) "Companion Services" means non-medical, basic supervisory services which are provided to the eligible care receiver in his home on a short-term, intermittent basis. Companion Services provide respite to a caregiver who is caring for eligible care receivers who do not require any personal care assistance, medical assistance, or housekeeping services during the time when companion services are provided.

(8) "Counseling, Support Groups, or Caregiver Training" means provision of advice, guidance, and education about options and methods of caregiving to provide support to caregivers in an individual or group setting.

(9) "Director" means the director of the Division of Aging and Adult Services (DAAS), Utah Department of Human Services).

(10) "Disability" means a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitation in 1 or more of the following areas of major life activity:

(a) self care,
(b) receptive and expressive language,
(c) learning,
(d) mobility,
(e) self-direction,
(f) capacity for independent living,
(g) economic self-sufficiency,
(h) cognitive functions, and
(i) emotional adjustment.

(11) "Division" means the Division of Aging and Adult Services (DAAS), Utah Department of Human Services.

(12) "Formal Resources" means an entity or individual that provides services for a fee or reimbursement.

(13) "Grandparent or Older Individual who is a Relative Caregiver" means a grandparent or step- grandparent of a child, or a relative of a child by blood, marriage, or adoption who is 55 years of age or older and:

(a) lives with the child;

(b) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and,

(c) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

(14) "Informal Resources" means family, friends, neighbors, community organizations or others who offer resources and support and are not assigned by formal agencies or organizations, irrespective of any payment received.

(15) "Multifaceted Systems" means a variety of systems of support for the caregiver including but not limited to those described in the required five service categories of the (NFCSP), Title III E of the Older Americans Act, as amended in 2000.

(16) "National Family Caregiver Support Program or NFCSP" is the federal program enacted as P. L. 106-501, Title IIIE of the Older Americans Act, P. L. 89-73, 42 USC Section 3001 et seq., as amended in 2000.

(17) "Relief means ease from or lessening of discomfort, anxiety, fear, stress, or burden.

(18) "Respite or Respite Care" is temporary, substitute supports or living arrangements to provide a brief period of relief or rest for caregivers as outlined in the service plan developed by a case manager following a formal assessment. It can be in the form of in-home respite, adult day care respite, or institutional respite for an overnight stay on an intermittent, occasional, or emergency basis. Respite can be provided for a caregiver for no more than 12 consecutive months from the date of enrollment and shall not exceed the annual service expenditure limit per client, as established by the Division in consultation the Area Agencies on Aging annually. If either condition is met, the caregiver must come off of the program and then may reapply on the anniversary of the start of services. Temporary respite may not be provided by the twenty percent

(20%) maximum supplemental services funds.

(19) "Severe Disability" means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(a) is likely to continue indefinitely; and

(b) results in substantial functional limitation in 3 or more of the following major life activities:

(i) self care,

(ii) receptive and expressive language,

(iii) learning,

(iv) mobility,

(v) self-direction,

(vi) capacity for independent living, and

(vii) economic self-sufficiency.

(20) "Service Plan" means a written plan which contains a description of the needs of the caregiver, the care recipient, and the services and goals necessary to meet those needs.

(21) "Supplemental Services" means other services to complement the care of caregivers, on a limited basis as determined by a case manager through the assessment process and included in a service plan. Supplemental services shall serve to maximize the support of caregivers and shall be flexible, adaptable, and responsive to the needs of the individual caregiver or care receiver wherever they reside in the State of Utah. Services provided under supplemental services shall not fall into other categories defined in the UCSP or the NFCSP.

(a) Expenditures for Supplemental Services are not included in the annual established service expenditure limit for Respite.

(b) Necessity for Supplemental Services shall be specified in the service plan goals. Reimbursement shall include the purchase and/or rental, installation, removal, replacement, or repair of approved items or services for the twelve months that the caregiver is on the program. The case manager will document in the caregiver file all funding resources explored and reasons alternative funding cannot be accessed. Items or services exceeding $250 per purchase must be prior approved by the Agency Director, or designee, based on a formal written request by the case manager or designee documenting the determination of need and estimated cost. The original approved waiver request will be placed and maintained by the Agency in the caregiver file and a copy sent in writing to the Division.

(c) "Supplies or Equipment" means durable and non-durable goods purchased and/or rented under supplemental services to provide support and assistance to caregivers in their caregiving responsibilities. Reimbursement shall include the purchase of supplies, and the purchase, and/or rental.installation, removal, replacement or repair of approved equipment.

(d) "Modifications or durable adaptive aids and devices" purchased as supplemental services shall be one-time purchases to provide support and assistance to caregivers in their caregiving responsibilities. Minor modifications of homes shall facilitate the ability of older individuals to remain at home or provide for the safety of the care receiver. Adaptive aids and devices shall assist the caregivers helping care receivers to perform normal living activities, and shall include the cost of any necessary installation fitting, adjustment, repair, and training. Adaptive aids and devices may be fabricated by a professional if the care receiver needs specialized aids and devices.

(e) "Legal, Financial, or Placement Services" purchased as supplemental services shall provide support and assistance to caregivers in their caregiving responsibilities. Services will provide the caregiver with legal, financial, and placement advice, counseling, and representation by an attorney, certified financial advisor, or other person acting under the supervision of an attorney, certified financial advisor, or placement professional.

(f) "Miscellaneous" services shall provide support and assistance to caregivers in their caregiving responsibilities. Miscellaneous services will facilitate the ability to provide services to caregivers that arise from unusual circumstances and shall assist the caregiver in performing their caregiving responsibilities.

(22) "Waiver" means an intentional release in writing by the Agency Director or designee, as authorized in the rules, from a program limitation included in these rules.

R510-401-4. Eligibility for Services.

(1) Services listed in Section R510-4O6-5 are available to caregivers, grandparents and older individuals who are relative caregivers.

(2) Priority to receive services shall be given in the order below:

(a) caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals); and

(b) family caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(c) older individuals providing care to individuals with severe disabilities, including children with severe disabilities; and

(d) grandparents or older individuals who are relative caregivers who provide care for children with severe disabilities.

(3) Respite care and Supplemental Services are available to caregivers who are:

(a) caregivers of adults 60 years of age or older; or are

(b) adult family members (age 18 years or older) or other adult informal caregivers providing care to individuals of any age with Alzheimer's disease and related disorders; or are

(c) caregivers 60 years of age or older caring for persons with mental retardation or related developmental disabilities; or are

(d) grandparents or older individuals (not biological or adoptive parents) 55 years of age or older who are a relative caregiver of a child not more than 18 years of age. ; or are

(e) grandparents and other relatives (not biological or adoptive parents) 55 years of age and older providing care to adults, age 18 to 59 years, with disabilities.

(4) To provide Respite and Supplemental Services to eligible the care receiver must be:

(a) Functionally impaired because the individual is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing or supervision; or

(b) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual; or

(c) A child physically or mentally impaired because the individual is unable to perform at least two areas of major life activity.

(d) The caregiver must demonstrate a medium-to-high risk score according to the DAAS Approved Demographic Intake and Screening tool and complete the DAAS-approved Assessment and DAAS-approved Burden score.

(5) In the event that there is insufficient funds to bring an individual on the program the Agency shall maintain a list of potential applicants. All potential applicants will be served in turn by using the DAAS-approved Demographic Intake and Risk Screening tool, and a Caregiver Burden score to determine eligibility for services.

R510-401-5. Responsibilities of the Division.

(1) Pursuant to UCA 62A-3-1O4, the Division shall:

(a) establish a funding formula for the distribution of the

funds as approved by the Board;

(b) monitor, and at the request of the Area Agency on Aging, consult and assist in UCSP;

(c) provide training opportunities;

(d) define minimal documentation and client assessment standards; and

(e) approve or disapprove waivers and exceptions.

R510-401-6. Program Content.

(1) Each Area Agency on Aging shall provide a multifaceted system of caregiver support services for caregivers and for grandparents or older individuals who are relative caregivers to include:

(a) information to caregivers about available services;

(b) individual, one-on-one assistance to caregivers in gaining access to services in the form of information and assistance or case management. Assistance may include but is not limited to such activities as phone contact and home visits;

(c) individual counseling, support groups, and caregiver training to assist the caregivers in making decisions and solving problems relating to their caregiving roles;

(d) respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(e) Supplemental Services, on a limited basis, to complement the care provided by caregivers.

(2) The Area Agency on Aging shall use the DAAS-approved Demographic Intake and Risk Screening form and assessment tool to determine eligibility for respite and supplemental services and said tools shall be kept in the client file.

(3) Prior to receiving respite or supplemental services the Area Agency on Aging shall develop a written service plan including goals and objectives for the caregiver, which shall be kept in the client file.

(4) The Area Agency on Aging shall ensure the provision of the full range of caregiver support services in the community by coordinating its activities with the activities of other community agencies and voluntary organizations providing supportive services to family caregivers and grandparents or older individuals who are relative caregivers of children.

(5) Older Americans Act information and services shall be provided to family caregivers in a direct and helpful manner. In cases where caregiver support programs already exist within the community, coordination of these programs and the UCSP is essential to maximize the dollars available for family caregivers and avoid duplication of services.

(6) To assure coordination of caregiver services in the planning and service area, the Area Agency on Aging shall convene a minimum of one joint planning meeting annually with other local providers who currently provide support services to family caregivers. As practical, the Area Agency on Aging shall coordinate the activities under this program with other community agencies and voluntary organizations providing services to caregivers.

(7) Funds allocated on an annual basis under the UCSP for services provided by an Area Agency on Aging shall be expended as follows:

(a) Information to caregivers about available services: the Area Agency on Aging may not use less than three percent of the funds allocated under the UCSP to provide these services.

(b) Assistance to caregivers in gaining access to the services: the Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(c) Individual counseling, organization of support groups, and caregiver training to caregivers to assist the caregivers in the areas of health, nutrition and financial literacy and in making decisions and solving problems relating to their caregiving roles. The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(d) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities: The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(e) Supplemental Services, on a limited basis, to complement the care provided by caregivers: The Area Agency on Aging may not use more than twenty percent of the funds allocated under the UCSP to provide these services.

(f) The Area Agency on Aging shall spend no more than ten percent of funds on services provided to grandparents and other individuals who are relative caregivers of a child not more than 18 years of age.

(8) If a customer discontinues Respite and/or Supplemental Services before the end of the twelve- month period and before the annual established service expenditure limit per client is reached, the case shall be closed.

(a) If funds are available, the caregiver may be readmitted to the program subsequent to the case closing but shall do so within twelve months from the original date of enrollment.

(b) If no funds are available, the person will be placed at the top of the list to be the first person to be admitted to the program if the person still has time left on the program.

(c) If funds become available, but there is no time remaining based on the original admission, then the caregiver needs to reapply and be considered for admission to the program with all other applicants.

(9) The Area Agency on Aging shall make use of trained volunteers to expand the provision of available resources and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out Federal service programs administered by the Corporation for National and Community Service), in community settings.

R510-401-7. Caregiver Advisory Council.

(1) The Area Agency on Aging shall develop and maintain a Caregiver Advisory Council.

(2) The Caregiver Advisory Council may be a subgroup of the Area Agency on Aging Advisory Council providing they meet the requirements set forth in the rule.

(a) The Caregiver Advisory Council may be comprised of no less than five members, some of who shall be caregivers.

(3) The Caregiver Advisory Council shall meet no less than semiannually, and meetings shall be scheduled by each Area Agency on Aging.

(4) The primary duty of the Caregiver Advisory Council shall include but not be limited to conducting an annual caregiver satisfaction survey for the caregiver program.

(5) The Caregiver Advisory Council shall advise the Area Agency on Aging in determining service needs and developing action plans. When there is a concern over the use of limited resources for Respite Care and Supplemental Services, the Area Agencies on Aging, in consultation with their Caregiver Advisory Council, may further limit the amount of services provided to an individual caregiver. This local policy decision shall be in writing and shall be uniform for all caregivers for the current fiscal year.

R510-401-8. Voluntary Contributions.

(1) Individuals receiving services from this program may be encouraged to participate in voluntary contributions for services, provided that the method of solicitation is non-coercive.

(2) Voluntary contributions shall in no way be based on a means test of an individual client's income.

(3) Each Area Agency on Aging shall implement procedures for voluntary contributions in the UCSP, and shall

comply, at a minimum, with the following:

(a) provide each recipient with an opportunity to voluntarily contribute to the cost of the services;

(b) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

(c) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution; and

(d) establish appropriate procedures to safeguard and account for voluntary contributions.

(4) Use all collected voluntary contributions to expand the service for which such contributions were given.

(5) In no instance shall services be denied if individuals do not participate in voluntary contributions.

(6) Area Agencies on Aging will consult with relevant service providers and older individuals in their planning and service area to determine the best method for accepting voluntary contributions.

R510-401-9. Reporting.

(1) The Area Agency on Aging shall collect data and maintain records relating to the UCSP in the format specified by the Division.

(2) The Area Agency on Aging shall furnish the records to the DAAS as specified.

(3) The Area Agency on Aging shall report to DAAS, as specified, the activities and determinations of the Caregiver Advisory Council.

(4) The Area Agency on Aging shall report to DAAS any mechanisms used with caregivers regarding information about and access to various services so that the persons can better carry out their caregiver responsibilities.

R510-401-10. Waiver Requests for Respite and Supplemental Services.

(1) An Area Agency on Aging may request in writing a waiver for Respite and Supplemental Services in order to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Agency Director, or designee, may grant a waiver for Supplemental Services or Respite on a case-by-case basis provided that such waiver is consistent with the law. A copy of the approved waiver request must be placed in the client file and a copy sent in writing to the Division.

KEY: caregiver, care receiver, elderly, respite
January 19, 2010 63A-3-104(4)
Notice of Continuation January 26, 2011 62A-3-104(5)

R512. Human Services, Child and Family Services.
R512-1. Description of Division Services, Eligibility, and Service Access.
R512-1-1. Purpose and Authority.

(1) The purpose of this rule is to clarify the scope of services the Division of Child and Family Services (Child and Family Services) provides to families in Utah.

(2) This rule is authorized by Section 62A-4a-102.

R512-1-2. Introduction.

(1) Pursuant to Sections 62A-4a-103 and 62A-4a-105, Child and Family Services is authorized to provide programs and services which support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

(2) Child Welfare Services shall be made available for children who are abused, neglected, exploited, abandoned; for those whose parents are unable to care for them; and for the assisting of youth who are ungovernable or who are runaways. Domestic violence services shall be made available to assist adult victims who have been abused or threatened by their partners.

(3) Child and Family Services shall provide protective services, services given in the family home, short-term temporary crisis placement services, out-of-home placement, and adoption services. The "Best Interest of the Child" shall be the guiding principle used in making decisions for those served by Child and Family Services.

(4) The programs administered by Child and Family Services have been established to help children remain with their families, to solve problems in their homes, and, if that is not possible, to place them in out-of-home care for as short a time as possible. When Child and Family Services finds that return of a child to the family will never be possible, adoption or guardianship shall be sought to insure a permanent family for the child. Domestic violence services shall provide comprehensive assistance to adult victims of domestic violence, their dependent children, and in some cases, to the abusive partner so that families can be restored to harmony or helped to develop new, more productive ways of life.

(5) Child and Family Services shall provide its services through local offices situated throughout the state. These offices are listed in telephone directories under Utah State Department of Human Services, Division of Child and Family Services and also on Child and Family Services' website.

(6) The State Office of Child and Family Services located in Salt Lake City shall operate as the central office to administer Child Welfare programs, which include:

(a) Program planning,
(b) Practice guideline development,
(c) Training and consultation,
(d) Program financing,
(e) Administration of the Interstate Compact on Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA),
(f) Legislative and federal liaison, and
(g) Information and referral.

R512-1-3. Prevention Services.

Child and Family Services will either provide for, or contract for, any of several child abuse and neglect prevention services. Most prevention services shall be provided and funded according to the requirements of Section 62A-4a-309, known as the Children's Trust Account legislation.

R512-1-4. Intervention Services.

(1) Protective Services. Child abuse and neglect investigation and services shall be provided to eligible clients. All referrals received alleging child abuse and neglect will be screened for assessment and/or investigation in accordance with the provisions of Section 62A-4a-409. Child and Family Services' caseworkers recognize that parents have the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline their children. They also recognize that removal affects these rights, creating a long-term impact on children. Child and Family Services' caseworkers are dedicated to maintaining children with their family when circumstances and services can make it safe for the children to remain home. Child and Family Services will determine whether or not a child has been abused or neglected, or is in danger thereof, and shall take necessary action to protect the child from potential danger. Temporary care of children in crisis placements may be provided when children cannot be returned home due to the likelihood of further abuse or neglect. The parents of a child in a crisis placement will be kept informed of the child's health and safety and will be involved in developing plans for themselves and their child. If parents desire to visit their child in a crisis placement, staff will arrange, as appropriate, visits with the child at the location designated by staff. Assessment and treatment services will be provided to victims of child sexual abuse and their families.

(a) Access. Investigations and/or assessments will be conducted using all appropriate referrals of alleged child abuse or neglect.

(b) Eligibility. A report of occurrence of child abuse or that a child is at risk thereof will constitute sufficient eligibility.

(2) Youth Services. Short-term crisis counseling services and shelter to runaway, homeless, and ungovernable youth and their families may be provided in order to stabilize the family.

(a) Access. Any youth, family, or other agency can access services defined in this rule, as long as the child is determined to be homeless, ungovernable, or a runaway.

(b) Eligibility. Youth who are either homeless or ungovernable or who have run away shall be eligible.

R512-1-5. In-Home Services.

(1) In-Home Services. Child and Family Services may offer services to families whose children are in their own homes, yet who are at a risk of or who have suffered from abuse or neglect. Services will be voluntary or court ordered, and shall be intensive to avoid unnecessary placement of children in protective custody. These services may include:

(a) Homemaker,
(b) Child day care,
(c) Day treatment for preschool children,
(d) Treatment for children who have been sexually abused,
(e) Protective supervision, and
(f) Family preservation services.

(a) Access. Only families referred by Child and Family Services staff shall be provided these services.

(b) Eligibility. A family must be determined to be in a state of crisis and children shall be at risk of abuse or neglect. Clients receiving treatment for preschool children and sexual abuse treatment may be required to pay a fee based on the family's ability to pay. Fees shall be calculated as a percentage of family income up to the total cost of the service. Clients receiving child care as a protective service shall not be assessed a fee; however, if the family is receiving child care and paying a fee prior to protective services, they will continue to pay day care fees.

(2) Custody Studies. Upon an order of the District Court, Child and Family Services may engage in and complete child custody studies.

(a) Access. Access shall be authorized by receipt of a District Court Order.

(b) Eligibility. A District Court Order will provide

eligibility. The parties to the action shall be assessed a fee based upon income. Fees shall be determined from the Department fee schedule #1 for low income families. A separate fee schedule shall provide for parents to pay up to the total cost of the study based upon income for families above 150% of the median income.

(3) Domestic Violence Services. For adult victims of domestic violence and their minor children, shelter care facilities may be provided in order to protect the adult victim and their children from further violence. Short-term counseling may be provided to the family while in shelter, and treatment services may be offered to the perpetrator of the abuse in order to stop the violence and maintain the family as a unit. Children of abused partners eligible for domestic violence services may receive child care without a fee as part of the protective services provided to the family.

(a) Access. The adult victim of family violence shall have access to the services listed above by requesting protection or by referral.

(b) Eligibility. The only eligibility factor is that the adult victim shall have been abused by their partner or some other member of the family. The perpetrator may be assessed, through court order, for the costs of Child and Family Services providing these services.

R512-1-6. Out-of-Home Care Services.

(1) The following definitions apply to this section:

(a) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(b) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(c) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

(2) Foster care and group care. Child placement services may be provided when parents are unable to meet their children's needs within the family. Child and Family Services has authority to place a child when the state has been granted custody through a court order, or when a voluntary agreement has been signed by the parents, or when the child is from another state and is covered by the ICPC. The intent of foster care or group care is to insure a permanent home for each child. This may be achieved through a return to the home, or through adoption, guardianship, or individualized permanency services. A permanency plan for each foster child, defining the goal and steps to be taken to achieve permanency, shall be formulated. Periodic reviews shall be held at least once every six months to assess progress achieved within the permanency plan, and to project a likely date for returning the child to the family home or to another permanent home arrangement. A dispositional hearing shall be held every 12 months from the date of placement to determine the future status of the child. Foster care shall be provided in licensed family homes. A foster parent or foster parents must complete a declaration of compliance with Section 78B-6-117 that they are not cohabiting with another person in a sexual relationship. Child and Family Services gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the region director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in the custody of Child and Family Services may be foster parents. Group care shall be provided in licensed facilities which offer a more structured treatment environment than a family home. Foster homes are licensed in accordance with Rule R501-12. Residential Treatment Programs, also known as group homes, are licensed in accordance with Rule R501-19.

(a) Access. Referrals can be made from Child Protective Services or from Juvenile Court and other agencies. Parents can request placement services by contacting the local Child and Family Services office. Referrals for foster care or group care may be screened to determine whether placement is the best option. In most cases, services which are intended to prevent placement must be first provided, before foster care or group care will be considered by Child and Family Services.

(b) Eligibility. Temporary child custody must be given to the state by court order, or by voluntary agreement, and most parents shall be obligated to pay support while their child is in foster care. Youth can be served in foster care or group care until age 18, or until age 21 when ordered by the court.

(3) Transition to Adult Living. Services may be given to older teenage foster children to teach self-sufficiency skills in order to increase their ability to be self-reliant in the future. Some who do not return to living with their parents upon leaving foster care will be allowed to live on their own. All foster children age 14 and older shall be required to be working toward at least one objective in developing independent living skills in their permanency plans.

(a) Access. Access shall be given only by a referral from the foster care caseworker.

(b) Eligibility. Foster children who are at least 14 years old and who are in the custody of the state shall be eligible.

(4) Adoption. This service provides adoptive homes for children in custody of the state who are legally available because the birth parents have been permanently deprived of parental rights by court action, or who have voluntarily relinquished their children for adoption.

(a) The choice of an adoptive home is based on the best interests of the child.

(b) Adults who are residents of Utah who wish to adopt a child in State custody in Utah may apply to the Utah Foster Care Foundation for consideration.

(c) Adults who are residents of other states who wish to adopt a child in State custody in Utah must meet the standards to adopt a child in their state custody as well as to comply with ICPC requirements.

(d) Children whose special needs make it more difficult to find appropriate adoptive homes may be eligible for adoption assistance that may include Medicaid and a monthly subsidy payment based on federal qualifying factors.

(e) To be eligible, the child must be in custody of the state and be legally freed for adoption, and the court must determine that adoption is the best permanency option for the child. Persons approved to be adoptive parents must meet certain standards before approval based on Rule R512-41. Authorization of adoption assistance for children with special needs shall be determined by Child and Family Services based on federal law.

(5) Provider Services. Persons applying to be foster care or emergency care parents shall be given information and a home study will be completed. For those approved as meeting program standards, basic training will be provided, as well as any additional training which may be required for some types of care. Annual reapproval is required.

(a) Access. Persons interested in becoming foster parents or who wish to provide emergency care, such as crisis placements, may apply at the Utah Foster Care Foundation.

(b) Eligibility. Any adult may apply for consideration. Persons approved to be providers must meet certain standards before approval is granted.

R512-1-7. Collection of Fees.

Child and Family Services regional office staff shall collect any assessed fees for services. Failure of a family to pay the assessed fee may result in the termination of the service and a referral to the Office of Recovery Services for collection. For

hardship situations, a fee reduction can be considered by the director of Child and Family Services.

R512-1-8. Civil Rights and Due Process.

Child and Family Services shall comply with the Department of Human Services policy of Civil Rights. Child and Family Services seeks to provide equal opportunity and to insure due process in all actions taken pursuant to these rules. Consumers have the right to be notified about decisions made about their eligibility for any service which is requested and received through Child and Family Services, and to request a hearing if they disagree with any decision. Notice of a decision shall be sent by Child and Family Services when an application for service or a service payment is denied, or if a service is reduced or terminated. Consumers must make a request for any hearings regarding services and decisions specified in this rule in writing.

KEY: social services, child welfare, domestic violence, eligibility

September 15, 2010	**62A-4a-102**
Notice of Continuation August 7, 2007	**62A-4a-103**
	62A-4a-105

R512. Human Services, Child and Family Services.
R512-11. Accommodation of Moral and Religious Beliefs and Culture.
R512-11-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures to accommodate the moral beliefs, religious beliefs, and culture of children and families served by the Division of Child and Family Services (Child and Family Services) according to Section 62A-4a-120.

(2) This rule is authorized by Section 62A-4a-102.

R512-11-2. Definitions.

(1) "Accommodate" means to adapt, adjust, or make provision to support.

(2) "Child and Family Assessment" means a document that is a collection of formal and informal assessments pertaining to the child and family identifying the strengths, resources, and needs of the family. The Child and Family Assessment is a working document used to record information, draw conclusions, and inform the Child and Family Plan.

(3) "Child and Family Plan" means the collective intentions of the Child and Family Team documenting specific goals, roles, strategies, resources, and schedules for coordinated provision of assistance, supports, supervision, and services for the child, caregiver, and parents, or guardians.

(4) "Child and Family Team" means a group that may consist of the child, the child's family, the Child and Family Services caseworker, the out-of-home provider, relatives, representatives of the family's moral beliefs, religious beliefs, and culture, representatives from education, health care, and law enforcement, the Guardian ad Litem, the parents' attorney, the Attorney General, and other supportive individuals as designated by the family.

(5) "Culture" means the totality of socially transmitted behavior patterns characteristic of a family and includes moral beliefs and religious beliefs.

(6) "Moral beliefs" means ideas of what is right and what is wrong that shape one's outward behavior. Moral beliefs define what is decent and honorable.

(7) "Religious beliefs" means faith or conviction in a system of principles or worship relating to the sacred and uniting its adherents in a community.

R512-11-3. Child and Family Services Responsibilities.

(1) Child and Family Services recognizes that children and families have the right to be understood within the context of their family's moral beliefs, religious beliefs, and culture.

(2) When intervening with a family, Child and Family Services caseworkers shall ask the family to identify aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the care and placement of the child.

(3) Child and Family Services shall develop a Child and Family Team when engaging children and families.

(a) The Child and Family Team shall discuss with the child and family any aspects of their moral beliefs, religious beliefs, and culture that they wish to have accommodated.

(b) The Child and Family Assessment shall document the moral beliefs, religious beliefs, and culture of the child and family and the accommodations requested by the child and family. It shall document the method that Child and Family Services will employ to make the accommodation or the reasons that such accommodation is not reasonable or proper. Accommodations shall be reflected in the Child and Family Plan.

(c) The decisions of the Child and Family Team related to accommodations of moral beliefs, religious beliefs, and culture shall be documented in the Child and Family Assessment and reflected in the services and provisions made in the Child and Family Plan. Any accommodation that cannot be provided shall be explained to the child and family and noted in the Child and Family Plan.

(d) When Child and Family Services is not able to accommodate exactly some aspect of the family's moral beliefs, religious beliefs, or culture, the Child and Family Team may explore the best way to accommodate the moral beliefs, religious beliefs, or culture of the child and family.

(e) The accommodations in the Child and Family Assessment and Child and Family Plan shall be periodically reviewed with the parents or caregivers, along with all other requirements, to assure that the moral beliefs, religious beliefs, and culture of the child and family are met according to the decisions made by the Child and Family Team.

(4) The planning and implementation of all other activities provided by Child and Family Services shall identify in the Child and Family Assessment and the Child and Family Plan aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the service. Documentation shall identify any requested accommodation and the method Child and Family Services employs to make accommodation for the child and family or the reasons accommodation is not reasonable or appropriate.

KEY: child welfare

September 15, 2010	**62A-4a-102**
Notice of Continuation January 18, 2011	**62A-4a-105**
	62A-4a-106
	62A-4a-120

R512. Human Services, Child and Family Services.
R512-203. Child Protective Services, Significant Risk Assessments.
R512-203-1. Purpose and Authority.

(1) The purpose of this rule is to define how significant risk assessments are utilized by the Division of Child and Family Services (Child and Family Services).

(2) Pursuant to Section 62A-4a-105, Child and Family Services is authorized to provide Child Protective Services (CPS). Child and Family Services is required by Section 62A-4a-1002 to promulgate a rule for making significant risk assessments.

(3) This rule is authorized by Section 62A-4a-102.

R512-203-2. Definitions.

(1) "Assessment" means an evaluation made to determine if a minor is a risk to other children and whether or not a minor's name should be placed and retained on the Licensing Information System.

(2) "Significant risk" means that a minor is likely to continue perpetrating against other children.

R512-203-3. Significant Risk Assessments.

(1) During the course of a CPS investigation involving allegations of conduct by a juvenile that is identified as severe or chronic as those terms are defined in Sections 62A-4a-101 and 62A-4a-1002, the CPS caseworker shall complete a significant risk assessment to determine whether a juvenile is a significant risk to other children or the community.

(2) To conduct this assessment the CPS caseworker shall use the assessment tool developed by Child and Family Services for the purpose of determining risk presented by the minor. The tool used will be the most current version of the significant risk assessment.

(3) The assessment shall be based upon the facts of the case that are present during the CPS investigation.

(4) The assessment process identified in Section R512-203-3 is not for determining whether the allegation under investigation is supported or unsupported.

(5) The juvenile's age alone is not a reason for determining whether the juvenile presents a significant risk.

(6) The completed significant risk assessment instrument for each minor assessed shall be made a part of the CPS record and shall be classified as Private pursuant to the Government Records Management and Access Act (GRAMA).

KEY: child welfare, child abuse

October 13, 2010	**62A-4a-102**
Notice of Continuation January 18, 2011	**62A-4a-105**
	62A-4a-1002

R590. Insurance, Administration.
R590-93. Replacement of Life Insurance and Annuities.
R590-93-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and pursuant to Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive.

R590-93-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of this rule.

(2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.

(3) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

R590-93-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e). A financed purchase is a replacement.

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2006

and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

(i) current death benefit;

(ii) annual contract premium;

(iii) current cash surrender value;

(iv) current dividend;

(v) application of current dividend; and

(vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

(i) the beginning and end date of the current report period;

(ii) the policy value at the end of the previous report period and at the end of the current report period;

(iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;

(iv) the current death benefit at the end of the current report period on each life covered by the policy;

(v) the net cash surrender value of the policy as of the end of the current report period; and

(vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) reissued with any reduction in cash value; or

(e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of Producers.

(1) In connection with or as part of each application for insurance, the applicant shall complete and the producer shall submit to the insurer the statements required in Subsection R590-93-5(3) as to:

(a) whether the applicant has existing policies or contracts; and

(b) whether the proposed insurance will replace, discontinue, or change an existing policy or contract.

(2) If the applicant answered "yes" to the question regarding replacement, discontinuance, or change of an existing policy or contract referred to in Subsection (1), the producer shall present to the applicant, not later than at the time of taking the application, the Notice regarding replacements in the form as described in Appendix A or other substantially similar document filed with the commissioner. However, a filing shall not be required when amendments to the Notice are limited to the omission of references not applicable to the product being sold or replaced. The Notice shall be signed by both the applicant and the producer attesting that the Notice has been read aloud by the producer or that the applicant did not wish the Notice to be read aloud, in which case the producer need not have read the Notice aloud, and left with the applicant. With respect to an electronically completed application and Notice, the producer is not required to leave a copy of the electronically completed Notice with the applicant.

(3) The Notice shall list each existing policy or contract contemplated to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract holder in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in Subsection R590-93-6(3), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

R590-93-5. Duties of Insurers that Use Producers.

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

(a) inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

(b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a

percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to:

(a) whether the applicant has existing policies or contracts; and

(b) whether the proposed insurance will replace, discontinue, or change an existing policy or contract;

(4) require with each application for life insurance or annuity that indicates the replacement, discontinuance, or change of an existing policy or contract, a completed Notice regarding replacements as contained in Appendix A;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection R590-93-4(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection R590-93-4(5) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

R590-93-6. Duties of Replacing Insurers that Use Producers.

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed Notice, the replacing insurer shall send a printed copy of the electronically executed Notice to the applicant within five business days of the date the Notice is received by the company;

(c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notification regarding replacement required in Subsection R590-93-4(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 calendar days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection R590-93-4(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection R590-93-4(4); and

(b) within ten business days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection R590-93-4(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-7. Duties of the Existing Insurer.

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) within 5 business days of a replacement notification send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails

to respond to the statement, the insurer shall send the applicant, with the policy or contract, the Notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a Notice, as described in Appendix C, or other substantially similar document filed with the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to file the document with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the Notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed Notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding existing policies or contracts and whether the proposed insurance will replace, discontinue, or change an existing policy or contract;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer;

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company; or

(f) advising a policy or contract holder to obtain policy values from an existing policy or contract with the intent to indirectly replace the policy or contract without complying with the requirements of this rule.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-10. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

R590-93-11. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 calendar days after the effective date.

KEY: life insurance, annuity replacement
January 10, 2011 31A-2-201
Notice of Continuation April 15, 2009 31A-23a-402

R590. Insurance, Administration.
R590-133. Variable Contracts.
R590-133-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement Title 31A and Subsection 31A-20-106(1)(b)(ii) that gives the commissioner authority to regulate by rulemaking the issuance and sale of variable contracts.

R590-133-2. Definition.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Variable contract," means a policy or contract that provides life insurance or annuity benefits that may vary according to the investment experience of any separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Sections 31A-5-217 and 31A-18-102.

B. "Variable contract producer," means a licensed producer or licensed consultant with a variable contracts line of authority.

R590-133-3. Qualification of Insurers to Issue Variable Contracts.

No insurer may deliver or issue for delivery a variable contract within this state unless the insurer is licensed to do a variable life, annuity, or both, business in this state in accordance with Section 31A-20-106.

R590-133-4. Governance of Separate Accounts.

All separate accounts shall be governed specifically by Sections 31A-5-217; 31A-5-217.5; 31A-18-102; 31A-20-106; 31A-21-301 and 31A-22-411 and this rule. They shall be governed generally by the provisions of the code applicable to life insurance companies not explicitly exempted by the code.

R590-133-5. Required Reports.

A. An insurer issuing an individual variable contract providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at the last address known to the insurer, a statement or statements reporting the investments held in the separate account.

B. The insurer shall submit annually to the commissioner a statement of the business of its separate account or accounts in a form as may be prescribed by the National Association of Insurance Commissioners.

C. An insurer issuing an individual variable contract shall mail to the contract holder, at least once in each contract year after the first, at the last address known to the insurer, a statement reporting as of a date not more than four months previous to the date of mailing:

(1) in the case of an annuity contract under which payments have not yet commenced:

(a) the number of accumulation units credited to the contract and the dollar value of a unit; or

(b) the value of the contract holder's account; and

(2) in the case of a life insurance policy, the dollar amount of the death benefit.

R590-133-6. Foreign Insurers.

If the law or rule in the place of domicile of a foreign insurer provides a degree of protection to the contract holders and the public that is substantially equal to that provided by this rule, the commissioner, to the extent deemed appropriate in the commissioner's discretion, may consider compliance with the law or rule as compliance with this rule.

R590-133-7. Licensing of Variable Contract Producers.

(A) No producer or consultant is eligible to sell, offer for sale, or make a recommendation to purchase or terminate a variable contract unless licensed as a variable contract producer prior to making a solicitation, sale, or recommendation.

(B) The licensing as a variable contract producer may not become effective until satisfactorily completing the following requirements:

(1) be licensed in the line of life insurance;

(2) evidence that the applicant has previously passed Financial Industry Regulatory Authority examinations series six or seven and 63. Approval of registration to take the examinations is not acceptable;

(3) evidence of being Utah approved from the Financial Industry Regulatory Authority, Central Registration Depository;

(4) if the applicant is a non-resident, requirements of the state of domicile may be acceptable; and

(5) every application for a license as a variable contract producer shall be accompanied by the appropriate fee designated in the fee schedule adopted by the legislature.

R590-133-8. Additional Provisions Applicable to Variable Contract Producers.

A. Aperson licensed in this state as a variable contract producer shall immediately report to the commissioner:

(1) any suspension or revocation of the variable contract producer's license or life insurance producer's license in any other state or territory of the United States;

(2) the imposition of any disciplinary sanction imposed upon the producer by any national securities exchange, or national securities association, or any federal, or state or territorial agency with jurisdiction over securities or contracts on a variable basis;

(3) any judgment or injunction entered against the producer on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or rule.

B. The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract producer's license upon any ground that would bar the application or the producer from being licensed to sell life insurance contracts in this state. The statutes governing any proceeding relating to the suspension or revocation of a life insurance producer's license shall also govern any proceeding for suspension or revocation of a variable contract producer's license.

C. Renewal of a variable contract producer's license shall follow the same procedure established for renewal of a life insurance producer's license.

R590-133-9. Disclosure.

(A). The following information shall be furnished to an applicant for a variable contract prior to execution of the application:

(1) a summary description of the insurer and its principal activities;

(2) a summary explanation in non-technical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account;

(3) a brief description of the investment policy for the separate account with respect to the contract;

(4) a list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the commissioner of the state of domicile; and

(5) summary financial statements of the insurer and the separate account based upon the last annual statement filed with the commissioner, except that for a period of four months after the filing of any annual statement, the summary required may be based upon the annual statement immediately preceding the

last annual statement filed with the commissioner.

B. The insurer may include additional information as the insurer deems appropriate.

R590-133-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-133-11. Enforcement Date.

The commissioner will begin enforcing this rule 30 days from the rule's effective date.

R590-133-12. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provisions may not be affected.

KEY: insurance law
January 10, 2011 31A-2-201
Notice of Continuation January 12, 2007 31A-20-106

R590. Insurance, Administration.
R590-152. Health Discount Programs and Value Added Benefit Rule.
R590-152-1. Authority.

This rule is promulgated by the commissioner under 31A-8a-210, which authorizes the commissioner to enforce Chapter 8a and protect the public interest.

R590-152-2. Purpose and Scope.

(1) The purpose of this rule is to describe initial and renewal license procedures, fees, and other authorized charges, required and prohibited practices, advertising and marketing activity, disclosure requirements, provider agreements, dispute resolution, and record keeping.

(2) This rule applies to health discount programs, health discount program operators, and health discount program marketers.

(3) This rule applies to a value added benefit provided by a person licensed under Title 31A, Chapters 7 or 8.

R590-152-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-8a-102 and the following:

(1) "Administration of the health discount program" means the processes to solicit members, enroll members, maintain the membership, resolve disputes with members, disenroll members, and collect or refund fees and other authorized charges.

(2) "Authority to do business in this state" means having other applicable licenses as required by statute and operating within the scope of such licenses.

(3) "Health discount program marketer" means a person or entity, including a private label entity, that markets or distributes a health discount program but may also operate the marketed or distributed health discount program.

(4) "Private label entity" means an entity that purchases a health discount program from a health discount program operator and issues or markets the obtained health discount program under the private label entity's name or logo.

(5) "Prominently" means not less than 14-point type or no smaller than the largest type on the page if larger than 12 point type.

R590-152-4. General Information.

(1) The commissioner may examine, audit, or investigate the business and affairs of any health discount program operator or a licensed health discount program marketer or any person the commissioner believes may be operating or marketing a health discount program.

(2) A health discount program, a health discount program operator, or a health discount program marketer that offers an insurance benefit as part of a health discount program or in addition to a health discount program must comply with statutes and rules pertaining to the solicitation, negotiation, and sale of insurance in Utah that are otherwise applicable to the altering of such benefit.

R590-152-5. Licensing (Application, Initial, Renewal).

(1) The following must be licensed prior to offering a health discount program:

(a) a health discount program operator; or

(b) a health discount program marketer. A licensee licensed under Chapters 7 or 8 does not require a license as a health discount program operator or health discount program marketer when offering valued added benefits as part of their insurance product package.

(2) The "Application for Health Discount Program Operator or Health Discount Program Marketer" must be completed and submitted with the appropriate fee.

(3) The commissioner may deny an application from a health discount program operator or a health discount program marketer if the applicant would not be in compliance with Chapter 31A-8a because the applicant, in this or any other jurisdiction, for a matter dealing with a health discount program is:

(a) under investigation; or

(b) has been found in violation of a statute or regulation.

(4) A licensed health discount program operator must notify the commissioner each time a health discount program marketer or private label entity is added or deleted during the annual licensure period.

(5) Annual licensure period.

(a) A license issued under this section is for one annual period which expires each December 31st.

(b) A licensee desiring to continue to do business in this state must renew its license prior to December 31st each year by submitting an Application for Health Discount Program Operator or Health Discount Program Marketer and paying the required fee.

R590-152-6. Fees and Other Authorized Charges.

(1) A health discount program operator may provide discounts or free services through contracted providers to subscribers in exchange for a periodic payment to the program or as a benefit in connection with membership in a particular group.

(2) A health discount program operator may charge:

(a) a non-refundable one-time enrollment charge; and

(b) a refundable periodic fee.

(3) A health discount program operator that charges fees for a time period in excess of one month must, in the event of cancellation of the membership by the health discount program operator, make a pro-rata refund of the periodic fees paid by the member.

R590-152-7. Required Practices.

(1) A health discount program operator must have an active toll-free telephone number for members to call.

(2) Face to face, paper, telephone, and electronic communications with clients or potential clients must state that the health discount program is a discount plan and not insurance.

(3) When a health discount program operator or a health discount program marketer, markets or sells a health discount program together with any other product that can be purchased separately, including insured benefits, an itemized list of the fees or premiums for each individual product must be provided in writing to the client at solicitation.

(4) Information available to a health discount program member via a health discount program operator's or marketer's web page must be updated no later than 30 days from a change.

R590-152-8. Value Added Benefit.

(1) Any value added benefit must actually exist and a copy of the contract verifying such existence must be available upon request to the commissioner.

(2) Prior to any offering of a value added benefit, a person licensed under Title 31A, Chapter 7 or 8, shall:

(a) file with the commissioner a value added benefits list that includes the following:

(i) the insurer's name and address;

(ii) the insurer's policy form number(s) to which the value added benefit applies; and

(iii) a description of the benefits offered.

(b) comply with Sections R590-152-10 and 11, if providing a member discount card.

R590-152-9. Prohibited practices.

(1) A health discount program operator may not make any payments to providers for:

(a) participation in the health discount program;

(b) capitation payments;

(c) signing fees;

(d) bonuses; or

(e) other forms of compensation.

(2) A health discount program operator may not offer any insurance benefits unless licensed as an insurance producer and contracted and appointed by the insurer providing the insurance benefits.

R590-152-10. Advertising and Marketing.

(1) The format and content of any advertisement shall be sufficiently complete and clear as to avoid deceiving or misleading the reader, viewer, or listener.

(2) An advertisement of any insured product or benefit must comply with applicable provisions of Subsections 31A-23a-102 (12) and (13) and Rule R590-130, Rules Governing Advertisements of Insurance.

(3) A health discount program operator must approve in writing all advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program marketer marketing a health discount program operator's health discount program.

(4) All advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program operator and the health discount program operator's health discount program marketer must be available to the commissioner upon request.

(5) The health discount program operator must have an executed written agreement with a health discount program marketer prior to the health discount plan marketer marketing, promoting, selling, or distributing a health discount program.

R590-152-11. Disclosures.

(1) A health discount program operator must provide the disclosures required by Section 31A-8a-205.

(2) The membership card shall prominently state: "This is not health insurance."

(3) Disclosure materials provided to a purchaser or potential purchaser must include:

(a) membership materials;

(b) new enrollee information;

(c) a printed list of providers, or access to the health discount program operator's web page, that have agreed by written contract with the health discount program to accept the program;

(d) a statement that "A health discount program member is responsible for the entire payment of their medical or health care bill after the discount is applied."; and

(e) the complete terms and conditions of any refund policy.

(4) A health discount program operator or health discount program marketer must:

(a) provide a purchaser a 30-day money back guarantee, which allows the purchaser to terminate the contract and receive a full refund of any periodic fee paid; and

(b) the 30-day period must commence when the purchaser receives the membership materials.

R590-152-12. Contracts.

(1) A provider agreement between a health discount program operator and a provider network shall require:

(a) the provider network to have a written agreement with each provider in the network authorizing the provider network to contract with a health discount program operator on behalf of the provider; and

(b) the health discount program operator to inform each provider within the contracted provider network with information about the health discount program.

(2) A provider agreement between a health discount program operator and another health discount program operator that has contracted with a provider network shall require the contract with the provider network to comply with Subsection (1).

R590-152-13. Dispute Resolution Procedures.

A health discount program operator must:

(1) file its dispute resolution procedures with the commissioner pursuant to Section 31A-8a-203; and

(2) comply with its filed dispute resolution procedures.

R590-152-14. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-152-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-152-16. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance, medical discount program
January 20, 2011 31A-1-103
Notice of Continuation November 13, 2007 31A-2-201

R590. Insurance, Administration.
R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.
R590-167-1. Authority, Purpose and Scope.

(1) Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(3)(a), 31A-30-106(1)(k), and 31A-30-106.1(10).

(2) Purpose.

(a) The general purposes of the Act and this rule are:

(i) to enhance the availability of health insurance coverage to individuals and small employers;

(ii) to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans;

(iii) to ensure renewability of coverage;

(iv) to establish limitations on the use of preexisting condition exclusions;

(v) to prescribe the manner in which case characteristics may be used;

(vi) to regulate the use and establishment of separate classes of business;

(vii) to provide for portability; and

(viii) to improve the overall fairness and efficiency of the individual and small employer health insurance market.

(b) The Act and this rule are intended to:

(i) promote broader spreading of risk in the individual and small employer marketplace; and

(ii) regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers.

(3) Scope.

Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule:

(1) "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(a) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(b) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

(2) "Change in a Rating Factor" means the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(3) "Change in Rating Method" means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

(4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

(5) "Risk characteristic" means a rating factor other than a case characteristic allowed under Section 31A-30-106 or 31A-30-106.1, as applicable, including exact age, gender, family composition, the health status, claims experience, duration of coverage, or any similar characteristic related to the demographics or the health status or experience of an individual, a small employer or of any member of a small employer.

(6) "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

R590-167-3. Applicability and Scope.

(1) This rule shall apply to any health benefit plan which:

(a) meets one or more of the conditions set forth in Subsections 31A-30-104(1) and (2);

(b) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(c) is in effect on or after the effective date of this rule.

(2)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subsection R590-167-3(2)(a), the provisions of the subsection shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(c) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(3) A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

(1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(b) a statement describing the justification for establishing

the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

(c) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(2) For policies issued or renewed on or after January 1, 2011, a covered carrier may not establish a separate class of business without a prior approval of the commissioner.

(3) In order to receive an approval to establish a separate class of business under Subsection R590-167-4(2) the covered carrier shall submit a filing in compliance with R590-220 that includes:

(a) a written request to establish a separate class of business;

(b) description of all criteria employed by the carrier, or any of its agents, for determining membership in the class of business;

(c) disclosure of which health benefit plans will be available for purchase in the class and any significant limitations related to the purchase of such plans; and

(d) demonstrate to the satisfaction of the commissioner that the use of a separate class of business is necessary due to substantial differences in either expected claims experience or administrative costs related to the following reasons:

(i) the covered carrier uses more than one type of system for the marketing and sale of health benefit plans to covered insureds;

(ii) the covered carrier has acquired a class of business from another covered carrier;

(iii) the covered carrier provides coverage to one or more association groups;

(e) a list of previously approved classes of business; and

(f) for each class of business used prior to January 1, 2011, a certification that the continued use of the class of business is necessary due to conditions specified in Subsection R590-167-4(3)(d).

(4) A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

(1)(a) A covered carrier may not transfer or assume the entire insurance obligation, risk, or both of a health benefit plan covering an individual or a small employer in this state unless:

(i) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(ii) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier;

(iii) the carrier has provided notice to the commissioner of this state at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in Subsection R590-167-5(1)(c)(i) for the health benefit plans covering individuals and small employers in this state; and

(iv) the transaction otherwise meets the requirements of this section.

(b) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation , risk, or both of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(c)(i) The filing required under Subsection R590-167-5(1)(b) shall:

(A) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(B) describe whether the assuming carrier intends to maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection R590-167-5(3), or will incorporate them into an existing class of business, pursuant to Subsection R590-167-5(4). If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(C) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(D) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(E) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(F) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(G) include any other information required by the commissioner.

(ii) A covered carrier required to make a filing under Subsection R590-167-5(1)(b) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection R590-167-5(1)(b) and shall include at least the information specified in Subsection R590-167-5(1)(c)(i) for the individual or small employer health benefit plans in that state.

(d)(i) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in Section 31A-30-106 or 31A-30-106.1, the assuming carrier shall make a filing with the commissioner pursuant to Subsection 31A-30-105(3) seeking an extended transition period.

(ii) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subsection R590-167-5(1)(d)(i).

(iii) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(2)(a) Except as provided in Subsection R590-167-5(2)(b), a covered carrier may not cede or assume the entire insurance obligation, risk, or both for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(b) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(i) one or more individuals or small employers in the class

have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(ii) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

(3) A covered carrier that assumes one or more health benefit plans from another carrier and intends to maintain such health benefit plans as a separate class of business, shall submit a filing requesting approval to establish a separate class of business as provided in Subsection R590-167-4(3). The assumption shall not take place prior to approval of the request by the commissioner.

(4) A covered carrier that assumes one or more health benefit plans from another carrier and intends to incorporate them into an existing class of business shall comply with the following provisions:

(a) Upon assumption of the health benefit plans, such health benefit plans shall be maintained temporarily as a separate class of business, deemed to be approved by the commissioner under Subsection 31A-30-105(2)(b)(ii). A covered carrier may exceed the limitation contained in Subsection 31A-30-105(4) due solely to such assumption.

(b) During the 15-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(c) The transfers authorized in Subsection R590-167-5(4)(b) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(d) A covered carrier making a transfer pursuant to Subsection R590-167-5(4)(b) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(e) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection R590-167-5(4)(b). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(f) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of Subsections 31A-30-106(3)(a) or 31A-30-106.1(8)(a), as applicable.

(5) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

(6) The commissioner may approve a longer period of transition under Subsection R590-167-5(4) upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

(7) Nothing in this section or in the Act is intended to:

(a) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Section 31A-14-213, of the ceding or assuming carrier related to the transaction;

(b) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(c) reduce or diminish the protections related to an assumption reinsurance transaction provided in Section 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Sections 31A-30-106, 31A-30-106.1, and 31A-30-106.5.

(3) The rate manual developed pursuant to Subsections 31A-30-106(4), 31A-30-106.1(9), and R590-167-6(1) shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(a) A covered carrier offering a health benefit plan to an

individual may not use case characteristics other than those specified in Subsection 31A-30-106(1)(f) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection R590-167-6(2)(b). Tobacco use is not an allowable case characteristic. Tobacco use is an allowable risk characteristic when utilized in compliance with Subsection 31A-30-106(1)(b).

(b)(i) A covered carrier offering or renewing a health benefit plan to a small employer on or after January 1, 2011, may not use case characteristics other than:

(A) age band, as specified in Subsection 31A-30-106.1(6)(a), applicable to the age of the employee;

(B) geographic area; and

(C) family composition tier, as specified in 31A-30-106.1(6)(c).

(ii) For any geographic area used as a case characteristic by a covered carrier, base rates for any small employer health benefit plan offered or renewed on or after January 1, 2011 shall be subject to the following limitations:

(A) for any age band, the ratio of the base rate for the family tier to the base rate for employee only tier, shall not exceed 5; and

(B) for any family composition tier, the ratio of the base rate for any age band to the base rate for "less than 20" age band, may not exceed the following:

(I) 1.22 for age band 20 to 24;

(II) 1.34 for age band 25 to 29;

(III) 1.46 for age band 30 to 34;

(IV) 1.60 for age band 35 to 39;

(V) 1.80 for age band 40 to 44;

(VI) 2.20 for age band 45 to 49;

(VII) 2.80 for age band 50 to 54;

(VIII) 3.60 for age band 55 to 59;

(IX) 4.25 for age band 60 to 64; and

(X) 5.00 for age band over 65.

(c) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(d) The rate manual shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(e) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of an individual or small employer that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers that choose or are expected to choose a particular health benefit plan.

(f) The rate manual shall provide for premium rates to be developed in a two step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer without regard to any risk characteristics. The base rates shall reflect only the allowable case characteristics. The base rates for an individual health benefit plan offered to two individuals with the same case characteristics shall be identical. The base rates for a small employer health benefit plan offered to two small employer groups with the same case characteristics shall be identical.

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106, 31A-30-106.1, and 31A-30-106.5, to reflect the risk characteristics.

(g) Each rate manual developed pursuant to Subsection R590-167-6(1) shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

(4)(a) Except as provided in Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect to an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than $5 per month per individual or employee and is applied in a uniform manner to each health benefit plan in a class of business.

(5) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106.1(3) shall be applied as follows:

(a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(b)(i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106.1(3).

(ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106.1(3).

(c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(6)(a) Except as provided in Subsection R590-167-6(6)(b), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(ii) one plus the sum of:

(iii) the risk load applicable to the individual or small employer during the previous rating period; and

(iv) 15% prorated for periods of less than one year.

(b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(ii) one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(iii) one plus the sum of:

(A) the risk load applicable to the individual or small employer during the previous rating period; and

(B) 15%, prorated for periods of less than one year.

(c) Notwithstanding the provisions of Subsections R590-167-6(6)(a) and (b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsections 31A-30-106(1)(b) and 31A-30-106.1(2)(b).

(7)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsections 31A-30-106.1(1) through 31A-30-106.1(6) with respect to such trust.

(b) A request made under Subsection R590-167-6(7)(a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(i) adversely affect the participants and beneficiaries of the trust; and

(ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(c) A waiver granted under Subsection 31A-30-104(5) shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

(1) A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to Subsection 31A-30-107.3 may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

(2) In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under Subsections 31A-30-107(3)(e) or 107.1(3)(e), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous Coverage.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that violates the provisions of Subsection 31A-30-107.5 may not remain in force. A covered carrier shall immediately provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section.

R590-167-10. Status of Carriers as Covered Carriers.

(1) Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both, and be signed by an officer of the company.

(2) Except as provided by Subsection R590-167-10(3), a carrier may not offer health benefit plans to individuals, small employers, or continue to provide coverage under health benefit plans previously issued to individuals or small employers in this state, unless the filing provided pursuant to Subsection R590-167-10(1) indicates that the carrier intends to operate as a covered carrier in this state.

(3) If a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(a) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(b) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier;

(c) the carrier complies with the requirements of Sections 31A-30-106 and 31A-30-106.1 and this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier; and

(d) the carrier files a letter of intent indicating the carrier does not intend to operate as a covered carrier in this state and will maintain the business in compliance with the Act and this rule.

(4) If the filing made pursuant Subsection R590-167-10(3) indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection R590-167-10(3), for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Subsections 31A-30-106(4)(b) or 31A-30-106.1(9)(b), or both, as applicable, and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board;

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall contain the following

statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;" and

(iv) the actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual; and

(iv) a description of the carrier's classes of business as described in Subsection R590-167-4(1).

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan.

(3) Index Premium Rates.

(a) A small employer carrier shall file annually the index premium rate information required by Section 31A-29-117(2). The report shall include:

(i) the small employer index premium rate as of January 1 of the previous year;

(ii) the small employer index premium rate as of January 1 of the current year; and

(iii) the average percentage change in the index premium rate as of January 1 of the current and preceding year.

(b) The information described in Subsection R590-167-11(3)(a) shall be filed no later than February 1 of each year.

R590-167-12. Records.

Records submitted to the commissioner under this rule shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

R590-167-13. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-167-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule January 1, 2011.

R590-167-15. 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 will not be affected by the invalid provision.

KEY: health insurance

January 10, 2011 31A-30-106
Notice of Continuation September 10, 2009

R590. Insurance, Administration.
R590-259. Dependent Coverage to Age 26.
R590-259-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-605(4).

R590-259-2. Purpose and Scope.

(1) The purpose of this rule is to clarify marketplace rules relating to the coverage of children in the individual and group health benefit plan markets that have experienced disruption arising from implementation of federal health care reform.

(2)(a) Except as provided in R590-259-2(2)(b), this rule applies to any health insurer that provides individual or group health benefit plan coverage.

(b) Subject to R590-259-7, this rule applies to grandfathered plan coverage for individual and group health benefit plan coverage.

R590-259-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Certificate of insurability" means a certificate issued to an individual by the Utah Comprehensive Health Insurance Pool, pursuant to Subsection 31A-29-111(5)(c).

(2) "Grandfathered plan coverage" means coverage provided by a health insurer in which an individual was enrolled on March 23, 2010 for as long as it maintains that status in accordance with federal regulations.

(3) "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(4) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, ERISA, to the extent that the plan provides medical care, as defined in R590-259-3(10), and including items and services paid for as medical care to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(5)(a) "Health benefit plan" means a policy, contract, certificate or agreement offered by an insurer to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(b) "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

(c) "Health benefit plan" does not include:

(i) coverage only for accident, or disability income insurance, or any combination thereof;

(ii) coverage issued as a supplement to liability insurance;

(iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers' compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit-only insurance;

(vii) coverage for on-site medical clinics; and

(viii) other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(d) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(i) limited scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(iii) other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

(e) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance.

(f) "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(ii) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

(iii) similar supplemental coverage added to coverage under a group health plan.

(6) "Health insurer" means an insurer that offers a health benefit plan.

(7) "Individual carrier" has the same meaning as defined in Section 31A-30-103.

(8)(a) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, which includes a health benefit plan provided to individuals through a trust arrangement, association or other discretionary group that is not an employer plan, but does not include short-term limited duration insurance.

(b) For purposes of this subsection, a health insurer offering health insurance coverage in connection with a group health plan shall not be deemed to be a health insurer offering individual health insurance coverage solely because the insurer offers a conversion policy.

(9) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(10) "Medical care" means amounts paid for:

(a) the diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in R590-259-3(10)(a); and

(c) insurance covering medical care referred to in R590-259-3(10)(a) and (b).

(11) "Participant" adopts the meaning given under section 3(7) of ERISA.

(12) "Subscriber" means, in the case of individual health insurance contract, the person in whose name the contract is issued.

R590-259-4. Eligibility for Dependent Coverage to Age 26; Definition of Dependent; Uniformity of Plan Terms.

(1) A health insurer that makes available dependent coverage of children shall make that coverage available for children until attainment of 26 years of age.

(2) With respect to a child who has not attained 26 years of age, a health insurer shall not define dependent for purposes of eligibility for dependent coverage of children other than the terms of a relationship between a child and the plan participant, and, in the individual market, primary subscriber.

(3) A health insurer shall not deny or restrict coverage for a child who has not attained 26 years of age:

(a) based on the presence or absence of the child's financial dependency upon the participant, primary subscriber or any other person, residency with the participant and in the

individual market the primary subscriber, or with any other person, student status, employment or any combination of those factors; or

(b) based on eligibility for other coverage, except as provided in R590-259-7.

(4) Nothing in this rule shall be construed to require a health insurer to make coverage available for the child of a child receiving dependent coverage, unless the grandparent becomes the adoptive parent of that grandchild.

(5) The terms of coverage in a health benefit plan offered by a health insurer providing dependent coverage of children cannot vary based on age except for children who are 26 years of age or older.

R590-259-5. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status - Applicability; Opportunity to Enroll; Written Notice; Effective Date.

(1) This section applies to any child:

(a) whose coverage ended, or who was denied coverage, or was not eligible for group health insurance coverage or individual health insurance coverage under a health benefit plan because, under the terms of coverage, the availability of dependent coverage of a child ended before the attainment of 26 years of age; and

(b) who becomes eligible, or is required to become eligible, for coverage on the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010 by reason of the provisions of this section.

(2)(a) If group health insurance coverage or individual health insurance coverage, in which a child described in R590-259-5(1) is eligible to enroll, or is required to become eligible to enroll, in the coverage in which the child's coverage ended or did not begin for the reasons described in R590-259-5(1), and if the health insurer is subject to the requirements of this section the health insurer shall give the child an opportunity to enroll that continues for at least 30 days.

(b) The health insurer shall provide the opportunity to enroll, including the written notice beginning not later than the first day of the first plan year and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.

(3)(a) The notice of opportunity to enroll shall include a statement that children whose coverage ended, or who were denied coverage, or were not eligible for coverage, because the availability of dependent coverage of children ended before the attainment of 26 years of age are eligible to enroll in the coverage.

(b)(i) The notice may be provided to an employee on behalf of the employee's child and, in the individual market, to the primary subscriber on behalf of the primary subscriber's child.

(ii) For group health insurance coverage:

(A) the notice may be included with other enrollment materials that the health insurer distributes to employees, provided the statement is prominent; and

(B) if a notice satisfying the requirements of this section is provided to an employee whose child is entitled to an enrollment opportunity under R590-259-5(2), the obligation to provide the notice of enrollment opportunity under R590-259-5(3) with respect to that child is satisfied.

(c) The written notice shall be provided beginning not later than the first day of the first plan year and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.

(4) For an individual who enrolls under R590-259-5(2), the coverage shall take effect not later than the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010.

R590-259-6. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status - Group Health Plan Special Enrollee.

(1) A child enrolling in group health insurance coverage pursuant to R590-259-5 shall be treated as if the child were a special enrollee, as provided under 45 CFR Section 146.117(d).

(2)(a) The child and, if the child would not be a participant once enrolled, the participant through whom the child is otherwise eligible for coverage under the plan, shall be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(b) For purposes of this subsection, any difference in benefits or cost-sharing requirements constitutes a different benefit package.

(3) The child shall not be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

R590-259-7. Grandfathered Group Health Plans - Applicability.

(1) For plan years beginning before January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan and makes available dependent coverage of children may exclude an adult child who has not attained 26 years of age from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in section 5000A(f)(2) of the Internal Revenue Code, other than the group health plan of a parent.

(2) For plan years, beginning on or after January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan shall comply with the requirements of R590-259-4 through 6.

R590-259-8. Enrollment Periods.

(1) An individual carrier shall offer:

(a) continuously enrollment for individuals applying for a new policy; and

(b) for a dependent to be added to an existing policy:

(i) beginning May 1, 2011 and extending through June 15, 2011 for coverage effective July 1, 2011; and

(ii) at least once a year beginning 45 days prior to the policy renewal; or

(iii) continuously.

(2) During an enrollment period in R590-259-8(1), a dependent under the age of 19 shall be offered coverage on a guaranteed issue basis and without any limitations, pre-existing exclusions or riders based on health status.

(3) A health insurer shall provide prior written notice to each of its policyholders annually of the enrollment rights in R590-259-8(1)(b) that includes information as to the enrollment dates and how a dependent eligible for enrollment may apply for coverage with the insurer.

R590-259-9. Utah Alternative Mechanism Enrollment.

(1) An individual carrier shall offer a continuous enrollment to an individual under age 19 with a certificate of insurability:

(a) as required by Subsection 31A-30-108(3) and 31A-30-109(1); and

(b) on an underwritten basis without any limitations, pre-existing exclusions or riders based on health status.

(2) An individual carrier shall not:

(a) require a health benefit plan offered under the requirements of this section to cover more than one individual;

(b) deny or unreasonably delay the issuance of a policy; or

(c) refuse to issue a policy.

R590-259-10. Special Enrollment for Qualifying Events.

Nothing in this rule shall alter an applicant's ability to obtain health insurance during a special enrollment period, outside of the open enrollment period, resulting from a qualifying event as defined by the Health Insurance Portability and Accountability Act.

R590-259-11. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-259-12. Enforcement Date.

The department will begin enforcing the provisions of this rule immediately.

R590-220-13. 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: health insurance open enrollment
January 25, 2011 **31A-2-201**
31A-22-605

R612. Labor Commission, Industrial Accidents.
R612-12. Reporting Requirements for Workers' Compensation Coverage Waivers.
R612-12-1. Authority.

This rule is enacted under the authority of U.C.A. Sections 34A-1-104, 31A-22-1011, and 63G-3.

R612-12-2. Time Period for Insurance Carriers to File Waiver Report.

Insurance carriers issuing a waiver pursuant to Section 31A-22-1011 shall file with the Labor Commission a report, as required by this section, once monthly but in any event no later than the 5th of each month or the first business day thereafter.

KEY: workers' compensation, administrative procedures, reporting, settlements

August 11, 2008

34A-2-101 et seq.
34A-3-101 et seq.
34A-1-104
78B-8-402
78B-8-404

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

W. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2009, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2009, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2009, is incorporated by reference.

4. FR Vol. 75, No. 51. Wednesday, March 17, 2010, Pages 12681 to and including 12686 "Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards" Direct Final Rule" is incorporated by reference.

5. FR Vol. 75, No. 93. Friday, May 14, 2010. Pages 27188 to and including 27189 "Revising the Notification Requirements in the Expure Determination Provision of the Hexavalent Chromium Standards" Final rule,: confirmation of effective date" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2009, edition is incorporated by reference.

2. FR Vol. 75, No. 51. Wednesday, March 17, 2010, Pages 12681 to and including 12686 "Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards" Direct Final Rule" is incorporated by reference.

3. FR Vol. 75, No. 93. Friday, May 14, 2010. Pages 27188 to and including 27189 "Revising the Notification Requirements in the Exposure Determination Provision of the Hexavalent Chromium Standards" Final rule,: confirmation of effective date" is incorporated by reference.

4. FR Vol. 75. No. 152. Monday, August 9, 2010. Pages 47906 to and including 48177 "29 CFR Part 1926 Cranes and Derricks in Construction:" Final rule, is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations

and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred

form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in

accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of

materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal

service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302

and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications

shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the

discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible,

must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information,

whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly

named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration

of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the

immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to

obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
January 27, 2011 **34A-6**
Notice of Continuation November 2, 2007

R628. Money Management Council, Administration.
R628-11. Maximum Amount of Uninsured Public Funds Allowed to Be Held by Any Qualified Depository.
R628-11-1. Authority.

This rule is issued pursuant to Section 51-7-18.1.

R628-11-2. Scope.

This rule applies to all qualified depository institutions at which uninsured public funds may be held.

R628-11-3. Purpose.

This rule establishes a formula for determining the maximum amount of uninsured public funds that can safely be held by any qualified depository. The rule defines capital for each class of qualified depository institution, establishes a formula for calculating the maximum amount of uninsured public funds which can be held at a qualified depository institution, establishes a schedule for reduction of uninsured public deposits based on risk to public treasurers and establishes the frequency of public funds allotment adjustments.

R628-11-4. Definitions.

For the purposes of this rule:

A. "Tier one capital" means:

(1) For a federally insured commercial bank, thrift institution, industrial loan corporation or a savings and loan association, the same as defined in the Federal Deposit Insurance Act in CFR Chapter III Section 325.2 or the Office of Thrift Supervision in CFR Chapter V Section 565.2;

(2) For a federally insured credit union, the sum of undivided earnings, regular reserves, appropriations of undivided earnings referred to as "other reserves", and net income not already included in undivided earnings.

B. "Deposits" means: balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

C. "Out of State" means: in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.

D. "Maximum amount" means: the amount of deposits in excess of the federal deposit insurance limit.

E. "Qualified depository" means: a Utah depository institution as defined in Subsection 7-1-103(36) or a out of state depository institution as defined in Subsection 7-1-103(25) which may conduct business in this state under Section 7-1-702, whose deposits are insured by an agency of the Federal Government and which has been certified by the Commissioner of Financial Institutions as having met the requirements to receive uninsured public funds.

F. "Transaction account" means: a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by check or other negotiable instrument, a payment order of withdrawal, a telephone transfer or other electronic transfer or by any other means or device to make payments or transfer to third persons. This term includes demand deposits, NOW accounts, savings deposits subject to automatic transfers, and share draft accounts.

G. "Utah depository institution" means: a depository institution which is organized under the laws of, and whose home office is located in, this state or which is organized under the laws of the United States and whose home office is located in this state.

R628-11-5. General Rule.

A. Maximum Insured Public Funds

Any qualified depository may accept, receive, and hold deposits of public funds without limitation, if the total amount of deposits from each public treasurer does not exceed the applicable federal depository insurance limit.

B. Maximum Deposits in Excess of the Federal Insurance Limits For Qualified Utah Depository Institutions

(1) For all qualified Utah depository institutions which receive a qualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, and for all qualified Utah depository institutions which do not have an audit conducted by an independent certified public accountant, the maximum amount of uninsured public funds which may be held shall be according to the following schedule:

TABLE 1

Ratio of Tier one Capital to Total Assets	Uninsured Public Funds Allotment
5.0% or more	One X Capital
4.00% to 4.99%	.5 X Capital
Less than 4.00%	None

(2) A qualified Utah depository institution which receives an unqualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, may submit the audit report within 100 days of the date of the audit to the Department of Financial Institutions for review and the Commissioner of Financial Institutions must authorize that the ratios of Tier one capital to total assets applicable to the institution submitting the audit for determining the maximum amount of uninsured public funds allowed may be according to the following schedule:

TABLE 2

Ratio of Tier one Capital to Total Assets	Uninsured Public Funds Allotment
5% or more	1.5 X Capital
4.00% to 4.99%	.75 X Capital
Less than 4.00%	None

C. A qualified out-of-state depository institution will be treated as a qualified Utah depository subject to all the provisions of this section in determining its uninsured public funds allotment except that the uninsured public funds allotment will be reduced by multiplying by a factor of total deposits outstanding at Utah branches of the institution divided by the total deposits at the institution. Nothing in R628-11 shall prohibit an out-of-state depository institution from qualifying as a permitted out-of-state depository in accordance with R628-10.

R628-11-6. Responsibility to Monitor Balances.

Deposits in qualified depositories which are limited by R628-11-5(B) to the amount of federal deposit insurance must be monitored on a daily basis to assure that no public treasurer has deposit balances in excess of the federal insurance limit. The public treasurer making deposits and the qualified depository accepting deposits shall both be responsible to assure that the depositor's combined balance of all accounts stays within the federal insurance limit.

R628-11-7. Collateralization of Excess Uninsured Public Funds.

Pursuant to Section 51-7-18.1(5), the Money Management Council may require a qualified depository to pledge collateral security for deposits of uninsured public funds which exceed the uninsured public funds allotment established by this rule. Any pledging of collateral security required by the Money Management Council shall be in accordance with the provisions

of the Money Management Act and the rules of the Money Management Council.

R628-11-8. Frequency of Adjustment to the Uninsured Public Funds Allotment.

A. The uninsured public funds allotment for each qualified depository shall be established quarterly by the Council, based on the reports of condition filed with the Commissioner as of the close of the preceding quarter. The uninsured public funds allotments shall be established in accordance with the following:

TABLE 3

Report of Condition As Of:		Effective Date of Allotment	
December	31	April	1
March	31	July	1
June	30	October	1
September	30	January	1

B. The Money Management Council may make interim adjustments in a qualified depository's uninsured public funds allotment if material changes in a qualified depository's financial condition have occurred or if there is a formal enforcement action by the federal or state regulator. These interim adjustments may include but are not limited to:

(1) reducing a qualified depository's uninsured public funds allotment to the amount of public funds held by the institution at the time of the Council's review of either the formal enforcement action or the review of the material changes in the qualified depositories financial condition;

(2) reducing a qualified depository's uninsured public funds allotment to zero if there is not sufficient collateral to cover uninsured public funds.

C. Any qualified depository that becomes subject to a formal enforcement action by any federal regulator shall notify the Council within twenty-four hours of the publication of the action taken by a federal regulator. Failure of a qualified depository to comply with this requirement to notify the Council may result in action taken by the Council to require collateralization of uninsured public funds in accordance with Section 51-7-18.1(5) and Section R628-11-7.

D. When a formal enforcement action has been modified or terminated by a federal regulator, the qualified depository shall notify the Council within twenty-four hours of the publication of the modification or termination of any action.

R628-11-9. Right to Petition the Council for Review.

A qualified depository may petition the Money Management Council in writing for review and reconsideration of its allotment within 10 business days of written notice of the establishment or modification of its uninsured public funds allotment. The Money Management Council shall rule on any petition for review and reconsideration at its next regularly scheduled meeting.

R628-11-10. Notification of Public Treasurers.

Within 10 business days of the close of each calendar quarter, the Money Management Council shall cause a list of qualified depository institutions and the currently effective uninsured public funds allotment to be prepared and mailed to all public treasurers.

KEY: financial institutions, banking law
January 12, 2011 51-7-18.1(2)
Notice of Continuation October 12, 2010

R651. Natural Resources, Parks and Recreation.
R651-201. Definitions.
R651-201-1. Approved.

"Approved" means approved by the commandant of the United States Coast Guard, unless the context clearly requires a different meaning. For carburetor backfire flame control devices "approved" means the device is marked with one of the following: a U.S. Coast Guard approval number; complies with Underwriters Laboratory test UL 1111; or complies with the Society of Automotive Engineers test SAE J-1928.

R651-201-2. Sailboard.

"Sailboard" means a wind-propelled vessel with a mast and sail that are held up by the operator who stands while operating the vessel.

R651-201-3. Good and Serviceable Condition.

(1) "Good and Serviceable condition" means any required equipment must be in proper operating condition; and

(a) Required labels and markings shall be intact and legible;

(b) Required equipment shall not be stored inside original packaging; and

(c) A PFD is considered to be in serviceable condition only if the following conditions are met:

(i) No PFD may exhibit deterioration that could diminish the performance of the PFD, including metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion; webbings or straps used to secure the PFD on the wearer that are ripped, torn or which have become separated from an attachment point on the PFD; or any other rotted or deteriorated structural component that fails when tugged.

(ii) In addition to meeting the requirements of paragraph (i) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material; buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which show evidence of fungus or mildew; or loss of buoyant material or buoyant material that is not securely held in position.

(iii) In addition to meeting the requirements of paragraph (i) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed, except as provided in paragraph (iv) of this section; inflatable chambers that are all capable of holding air; oral inflation tubes that are not blocked, detached or broken; a manual inflation lanyard or lever that is not inaccessible, broken or missing; and, inflator status indicators that are not broken or otherwise non-functional.

(iv) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (i) and (iii) of this section.

R651-201-4. Immediately Available.

"Immediately available" means stored in plain and open view in the area where it will be used; not obstructed, blocked or covered in any way and capable of being quickly deployed.

R651-201-5. Readily Accessible.

"Readily Accessible" means easily located and retrieved without searching, delay or hindrance.

KEY: boating, parks
August 7, 2007 **73-18**
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-202. Boating Advisory Council.
R651-202-1. Boating Advisory Council.

A Boating Advisory Council, consisting of nine members, has been appointed by the board to represent boaters and others in boating matters. There is one member from each of the following interests: Boating safety and education organizations, sailing users, boating anglers, marine dealers, personal watercraft users, outfitting companies, paddle craft users, water sports users and motorboat users.

KEY: boating
October 27, 2009 73-18-3.5
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-203. Waterway Marking System.
R651-203-1. Regulatory Markers.

An orange cross within an orange diamond, on end, means: "Boats Keep Out."

An orange circle means: "Controlled Area."

An orange diamond, on end, without a cross means: "Danger."

An orange square or rectangle: "Provides Information."

(1) The following regulatory symbols shall be international orange on a white background, and descriptive wording within or accompanying the regulatory symbols shall be in black letters.

(2) When the regulatory symbols are displayed on a buoy, an orange band should encircle the buoy near the water line and near the top.

R651-203-2. Channel Markers.

(1) White buoys with red vertical stripes mark the center of a channel and may be lettered alphabetically from downstream to upstream.

(2) Green can buoys, odd numbers, mark the left side, and red nun buoys, even numbers, mark the right side of a channel when proceeding upstream or returning from the main body of water.

R651-203-3. Mooring Buoy.

A mooring buoy is white and is designated with a blue band which is at least three inches wide and encircles the buoy halfway between the waterline and the top.

R651-203-4. Diver's Flag.

A square, red flag with a white diagonal stripe from one top corner to the opposite bottom corner should be used to indicate the presence of a diver below. A rigid replica of the International Code "A" flag not less than one meter in height may also be used. The operator of any vessel shall not approach within 150 feet of a posted diver's flag, unless the vessel is part of the equipment in use by the divers.

R651-203-5. Obeying Waterway Markers.

The operator of a vessel shall obey the markings or instructions of any official waterway marker.

KEY: boating
1993 **73-18-4(1)**
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-204. Regulating Waterway Markers.
R651-204-1. Placement of Waterway Markers.

No person shall place on or near the waters of this state any waterway marker, except a diver's flag, without written authorization by a federal agency operating within federal authority or by the division.

R651-204-2. Hazards to Navigation.

No person shall place any permanent or anchored objects on the waters of this state without written authorization by a federal agency operating within federal authority or by the division.

R651-204-3. Destruction of Waterway Markers.

No person shall remove, destroy, or damage any waterway marker authorized to be placed by a federal agency or by the division; nor shall any person moor any vessel to a waterway marker, except mooring buoys.

KEY: boating
1987 **73-18-4(2)**
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-205. Zoned Waters.
R651-205-1. Obeying Zoned Waters.
The operator of a vessel shall obey zoned water requirements or restrictions.

R651-205-2. Deer Creek Reservoir.
Vessels and all other water activities are prohibited within 1500 feet of the dam. No water skiing in Wallsberg Bay.

R651-205-3. Green River.
The use of motors is prohibited between the Flaming Gorge Dam and the confluence with Red Creek.

R651-205-4. Stansbury Park Lake.
The use of vessels over 20 feet in length and motors, except electric trolling motors, is prohibited.

R651-205-5. Lower Provo River.
The section from where it enters into Utah Lake upstream to the gas pipeline is designated as a wakeless speed area, and the use of motors is prohibited upstream from this point.

R651-205-6. Decker Lake.
The use of motors is prohibited.

R651-205-7. Palisade Lake.
The use of motors, except electric trolling motors, is prohibited.

R651-205-8. Ivins Reservoir.
The use of motors whose manufacture listed horsepower is 10 horsepower or more is prohibited.

R651-205-9. Jordan River.
The use of motors is prohibited, except motors whose manufacture listed horsepower is less than 10 horsepower. Such motors are permitted on the Utah County portion of the river.

R651-205-10. Ken's Lake.
The use of motors, except electric trolling motors, is prohibited.

R651-205-11. Pineview Reservoir.
The use of motors, except electric motors, is prohibited in the designated area in the North Arm, North Geersten Bay and the Middle Fork of the Ogden River. Vessels are prohibited in the Middle Inlet and Cemetery Point picnic areas.

R651-205-12. Jordanelle Reservoir.
The use of motorboats or sailboats is prohibited in the designated area of Hailstone Beach.

R651-205-13. Little Dell Reservoir.
The use of motors is prohibited.

R651-205-14. Bear Lake.
The use of a vessel is prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance station and extending approximately 1/4 mile south, when this area is marked with appropriate buoys.

R651-205-15. Lost Creek Reservoir.
A vessel may not be operated at a speed greater than wakeless speed at any time.

R651-205-16. Huntington Reservoir.
The use of motors whose manufacturer listed horsepower is 10 horsepower or more is prohibited.

R651-205-17. Cutler Reservoir.
The use of motors whose manufactured listed horsepower is more than 35 horsepower is prohibited, and a vessel may not be operated at a speed greater than wakeless speed at any time in the area south of the Benson Railroad Bridge. A vessel may not be operated at a speed greater than wakeless speed from the last Saturday in September through March 31st in the Bear River, east of the confluence with the reservoir.

KEY: boating, parks
March 10, 2008 **73-18-4(1)(c)**
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-206. Carrying Passengers for Hire.
R651-206-1. Definitions.

(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For float trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

(5) "CFR" means U.S. Code of Federal Regulations.

(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For float trip vessels, the annual dockside inspection may be performed at the company's place of business.

(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(9) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(10) "License" means a Utah Captain's/Guide's License or a U.S. Coast Guard Master's License.

(11) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak, or similar vessel).

(12) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

(13) "Other rivers" means all rivers or river sections in Utah not defined in Subsection (18) of this rule as a whitewater river.

(14) "Permit" means a Utah Boat Crew Permit.

(15) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(16) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(a) Towing for hire is considered carrying passengers for hire

(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.

(17) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.

(18) "Whitewater river" means the following river sections: the Green and Yampa Rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other Division recognized whitewater rivers in other states.

(19) "Float trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A float trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

R651-206-2. Outfitting Company Responsibilities.

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s)issued by an appropriate federal or state land managing agency;

(iii) Evidence of general liability insurance coverage; and

(iv) Payment of a $150 fee for an outfitting company whose place of business is physically located within the State of Utah, or

(v) Payment of a $200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(b) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;

(b) Obtained the appropriate first aid and CPR certificates; and

(c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

(a) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;

(b) The outfitting company or agent is convicted of three

violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel.

(c) A check of the vessel's required carriage of safety equipment.

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a float trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be for a minimum of $1,000,000 aggregate per incident.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's

(a) Drug free workplace policy;

(b) A passenger manifest and trip voyage plan;

(c) Trip operation logs;

(d) A vessel's maintenance and inspection files; or

(e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit.

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah Captain's/Guide's License or Utah Boat Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah Captain's/Guide's License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah Captain's/Guide's License or Utah Boat Crew Permit, with the appropriate whitewater river or other river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(d) A boat operator, carrying passengers within a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area shall comply with the guidelines for safe boat operation adopted by the management of the Migratory Bird Production Area.

(2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," "other," and "flatwater" river designations.

(e) A license with an "Other River Guide" endorsement is required when carrying passengers for hire on any river or river section designated as "other" or "flatwater."

(f) A permit with a "lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on

board the vessel, by a qualified license holder with a "Lake and Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with an "Other River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Other River Guide" endorsement.

(j) All Vessel Operator Permits and River Guide 1, 2, 3, and 4 Permits will expire at the end of their current term. Applications for renewal or duplicate of a Vessel Operator or River Guide Permit will be changed to the respective Utah Captain's/Guide's License or Utah Boat Crew Permit.

(k) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a Utah Captain's/Guides License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in a manner accepted by the Division.

(c) The applicant shall pay a $50 application fee for the license and first endorsement. A fee of $10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the four types of license endorsements:

(i) Lake and Reservoir Captain (LCG)

(ii) Tow Vessel Captain (TCG)

(iii) Whitewater River Guide (WCG)

(iv) Other River Guide (OCG)

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A current Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah Captain's/Guide's License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test.

(iv) Pay a $15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain (LCG) - a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Captain (TCG) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Guide (WCG) - A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Other River Guide endorsement.

(iv) Other River Guide (OCG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah Captain's/Guide's License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Captain's/Guide's License may be renewed within the six months prior to its expiration.

(b) To renew a Utah Captain's/Guide's License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah Captain's/Guide's License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Boat Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first permit, the application and issuance of the permit shall be done in a manner accepted by the Division.

(c) The applicant shall pay a $50 application fee for the

original permit and first endorsement. A $10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of permit endorsements:

(i) Lake and Reservoir Crew (LRC)

(ii) Tow Vessel Crew (TVC)

(iii) Whitewater River Crew (WRC)

(iv) Other River Crew (ORC)

(e) The applicant shall provide original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.

(i) Lake and Reservoir Crew (LRC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Crew (TVC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Crew (WRC) - A minimum of three river trips on "whitewater" rivers or river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Other River Crew endorsement.

(iv) Other River Crew (ORC) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.

(6) A Utah Boat Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Boat Crew Permit may be renewed within the six months prior to its expiration.

(b) To renew a Utah Boat Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.

(c) The renewed permit will have the same month and day expiration as the original permit.

(d) A Utah Boat Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.

(e) A Utah Boat Crew Permit holder who upgrades to a Utah Captain's/Guide's License, within one year of when the permit was issued, shall receive a $25 discount on the fee for the Utah Captain's/Guide's License.

(7) In the event a Utah Captain's/Guide's License or a Utah Boat Crew permit is lost or stolen, a duplicate license or permit may be issued with the same expiration date as the original license or permit.

(a) The applicant must complete the prescribed application form.

(b) The fee for a duplicate license or permit is $15.

(8) Current Utah Captain's/Guide's License and Utah Boat Crew Permit holders shall notify the Division within 30 days of any change of address.

(9) A Utah Captain's/Guide's License or Utah Boat Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:

(a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.

(b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;

(c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;

(d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;

(e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.

(10) A Utah Captain's/Guide's License or Utah Boat Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or designated flatwater river section, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.

(11) Number of passengers carried for each license or permit holder.

(a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.

(c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.

(12) Low capacity vessels being led requirements.

(a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.

(b) On lakes, reservoirs, and designated flatwater river sections, there shall be at least one qualified license or permit holder for every six low capacity vessels being led in a group.

(13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.

(14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the

vessel getting underway. This discussion shall include the topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah Captain's/Guide's License or Utah Boat Crew Permit as required by this section.

R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.

(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs - used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs a being stowed on the vessel, the PFDs shall be stowed in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, hard-hulled kayak or white water canoe operators or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, for hard-hulled kayak or sea-kayak operators, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life-saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) Float trip vessels are only required to carry a map of the water body.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its

name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

R651-206-7. Towing Vessels for Hire Requirements.

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee. The registration of a person or entity towing for hire will be required beginning January 1, 2008.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.

(6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be a minimum of $1,000,000 per incident.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.

(9) A vessel engaged in towing vessels for hire, must have at least one license holder on board.

(10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.

(12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(13) Additional Equipment Requirements for Vessels Towing for Hire.

(a) PFDs.

(i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.

(ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.

(b) Vessel shall be equipped with a depth finder.

(c) Tow Line.

(i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;

(v) A jump starting system;

(vi) A tool kit and spare items for repairs on assisting vessel; and

(vii) Damage control items for quick repairs to another vessel.

R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.

(1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.

(2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.

(3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".

(a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".

(i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.

(ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel Inspection Manual" has been presented to the Boating Advisory Council.

(b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

(c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the Float Trip Vessel carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

KEY: boating, parks
August 9, 2010 73-18-4(4)
Notice of Continuation January 11, 2011

R651. Natural Resources, Parks and Recreation.
R651-207. Registration Fee.
R651-207-1. Yearly Registration Fee.

The registration fee shall be $25 per year.

KEY: boating
July 9, 2007 **73-18-7(2)**
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-208. Backing Plates.
R651-208-1. Backing Plates.

On vessels where an assigned number on the hull or superstructure would not be visible or where the type of hull material used would make it impractical to attach an assigned number, the assigned number and registration decals may be mounted on a backing plate and displayed as required in Subsection 73-18-7 (4) of the Utah Code Annotated and Rule R651-212.

KEY: boating
1987 73-18-7(4)
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-210. Change of Address.
R651-210-1. Change of Address.

The registered owner of a motorboat or sailboat, after notifying the division or agent of the division of his change of address, shall note the new address on his current registration card.

KEY: boating
1987 **73-18-7(14)**
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-211. Assigned Numbers.
R651-211-1. Assigned Numbers.

The assigned number will consist of the prefix letters, "UT", to designate the State of Utah, one to four numerals, and two suffix letters that may designate a certain type of vessel. The suffix letters that designate a certain type of vessel are: AB - Airboat; DL - marine dealer or manufacturer; EX - Exempt (for official government business only). All other suffixes shall be randomly assigned.

R651-211-2. Assigned Number Reserved for the Division.

"UT 2628 BP" shall be the assigned number reserved for Division use in boating education and law enforcement training, and shall not be assigned to any vessel.

KEY: boating
January 15, 2005 73-18-7(18)(a)
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-212. Display of Yearly Registration Decals and Month of Expiration Decals.
R651-212-1. Display of Registration Decals.

A yearly registration decal shall be displayed three inches aft of the assigned number on each side of the vessel. On documented vessels, a yearly registration decal shall be displayed on each side of the forward half of the vessel. Only current-year registration decals may be displayed.

R651-212-2. Month of Expiration Decal.

A month of expiration decal shall be displayed immediately aft of the yearly registration decal.

KEY: boating
January 15, 2005 73-18-7(18)(b)
Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.
R651-215. Personal Flotation Devices.
R651-215-1. Definitions.

(1) "PFD" means personal flotation device.

(2) "Vessel length" is the measurement of the permanent part of the hull, from bow to stern, across the deck down the centerline, excluding sheer.

(3) "Wear" means to have the PFD properly worn with all fasteners connected.

(4) "Whitewater canoe" means a one or two person capacity hard hulled canoe designed for white water activities and is equipped with: floatation (e.g., factory end chambers or float bags) and thigh straps or retention devices to hold the operator(s) in the vessel if it rolls.

R651-215-2. PFD Requirements for Vessels Less than 16 Feet in Length.

No person shall operate or give permission for the operation of a vessel less than 16 feet in length unless there is at least one Type I, II, or III PFD for each person on board.

R651-215-3. PFD Requirements for Vessels 16 Feet or More in Length.

No person shall operate or give permission for the operation of a vessel 16 feet or more in length unless there is at least one Type I, II, or III PFD for each person on board. In addition to the total number of PFD's, there shall also be one Type IV PFD on board.

R651-215-4. Types of Personal Flotation Devices.

Type I - Off-shore Life Jacket - provides the most buoyancy of any type of PFD. Designed to turn the most unconscious wearers to a face-up position in the water. Effective for all waters, especially open, rough or remote waters where rescue may be delayed. Acceptable for use on all vessels.

Type II - Near Shore Buoyancy Vest - is designed to turn some unconscious wearers to a face-up position in the water. Intended for calm, inland waters where there is a good chance of quick rescue.

Type III - Flotation Aid - Good for conscious users in calm, inland waters where there is good chance of quick rescue. Designed so conscious wearers can place themselves in a face up position in the water. The wearer may have to tilt their head back to avoid turning face-down in he water.

Type IV - Throwable Device - Designed to be thrown to a person in the water and grasped and held by the user until rescued. Not designed to be worn.

Type V - Special Use Device - Intended for specific activities and may be carried instead of another PFD if used according to the approval conditions on its label.

R651-215-5. Immediately Available and Readily Accessible.

Type IV PFDs shall be immediately available; all other types of PFD shall be readily accessible, unless wearing is required.

R651-215-6. Type V PFD Carried in Lieu.

A Type V PFD may be carried or worn in lieu of another required PFD, but only if it is used according to the approval conditions on its label.

R651-215-7. Whitewater River PFD Requirements.

On whitewater rivers, as defined in Subsection R651-206-2 (1), Type I or Type III PFDs, are required and shall be used according to the approval conditions on their labels.

R651-215-8. River Throw Bag in Lieu of Type IV PFD.

On a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried.

R651-215-9. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this section.

(2) All persons on board a personal watercraft shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On every river, every person on board a vessel must wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water river section(s) as listed in Section R651-215-10.

R651-215-10. Designated Flatwater River Sections.

(1) On the Green River:

(a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;

(b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;

(c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;

(d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and

(e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.

(2) On the Colorado River:

(a) from the Colorado/Utah state line to the Westwater Ranger Station;

(b) from Big Hole Canyon in Westwater Canyon to Onion Creek;

(c) from Drinks Canyon, mile 70, to the confluence with the Green River; and

(d) after the last active rapid in Cataract Canyon.

(3) On the San Juan River, after the last active rapid prior to Lake Powell.

R651-215-11. PFDs.

All Personal Flotation Devices (PFDs) must be used according to the conditions or restrictions listed on the U.S. Coast Guard Approval Label.

KEY: boating, parks
August 9, 2010 **73-18-8**
Notice of Continuation January 11, 2011

R651. Natural Resources, Parks and Recreation.
R651-222. Muffling Requirements.
R651-222-1. Mufflers Required.

Every motorboat operated upon the waters of this State shall at all time be equipped with a muffler or a muffler system in good working order and in constant operation and effectively installed to prevent any excessive or unusual noise.

R651-222-2. Muffler Defined.

"Muffler" means a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and prevents excessive or unusual noise.

R651-222-3. Maximum Sound Level SAE J2005.

No person shall operate or give permission for the operation of any motorboat upon the waters of this state in such a manner as to exceed the following noise levels:

(1) For engines manufactured before January 1, 1993, a noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by test SAE J2005; or

(2) for engines manufactured on or after January 1, 1993, a noise level of 88dB(A) when subjected to a stationary sound level test as prescribed by test SAE J2005.

R651-222-4. Maximum Sound Level SAE J1970.

After January 1, 1992, no person shall operate a motorboat on the waters of this state in such a manner as to exceed a noise level of 75dB(A) measured as specified in test SAE J1970. Provided, that such measurement shall not preclude a stationary sound level test as prescribed by SAE J2005.

R651-222-5. Muffler Bypass or Alteration Prohibited.

(1) No person shall operate or give permission for the operation of any motorboat upon the waters of this state that is equipped with an altered muffler, muffler cutout, muffler bypass, or other device designed or installed so that it can be used to continually or intermittently bypass; or reduce or eliminate the effectiveness of any muffler or muffler system installed on a motorboat.

(2) Rule R651-222-5 (1) shall not apply to a motorboat equipped with a muffler cutout, muffler bypass, or other device designed or installed so that it can be used to continually or intermittently bypass; or reduce or eliminate the effectiveness of any muffler or muffler system installed on a motorboat, (a) if the mechanism has been permanently disconnected or made inoperable, where it cannot be operated in the manner described in Rule R651-222-5 (1), or (b)the muffling systems operated by the bypass meet the requirements in R651-222-3.

R651-222-6. Muffler Removal Prohibited.

No person shall remove, alter, or otherwise modify in any way a muffler or muffler system on a motorboat, in a manner that will prevent the motorboat from complying with rule R651-222-3.

R651-222-7. Mufflers Required on Motorboats Sold.

(1) No person shall manufacture, sell, or offer for sale any motorboat:

(a) that is not equipped with a muffler or muffler system; or

(b) that does not comply with rule R651-222-3.

(2) This rule shall not apply to motorboats designed, manufactured and sold for the sole purpose of competing in racing events only and for no other purpose. Any motorboat exempted under this rule shall be documented as such in the sales agreement and shall be formally acknowledged by signature of the buyer and seller and copies of the agreement shall be maintained by both parties. A copy of the agreement shall be kept on board whenever the motorboat is operated. Any motorboat sold under this exemption may only be operated on the waters of this State in accordance with rule R651-222-8.

R651-222-8. Muffler Exemptions.

Except as outlined in rule R651-222-7, the operational provisions of this rule shall not apply to:

(1) motorboats registered in and actually participating in a racing event authorized by the Division or scheduled tuneup periods prior to the racing event; or

(2) to a motorboat being operated by a boat or engine manufacturer for the purpose of testing and/or development and the testing has been authorized by the Division.

R651-222-9. Enforcement.

A peace officer who has reason to believe that a motorboat is being operated in excess of the noise levels established in rule R651-222-3, may direct the operator of the motorboat to submit the motorboat to an on-site test to measure the noise level. If the motorboat exceeds the established decibel level, in addition to issuing a summons, the officer may direct the operator to return to the point of embarkation and prohibit operation of the motorboat until the motorboat meets the established decibel level.

KEY: boating, motorboat noise
October 18, 2005 73-18-11
Notice of Continuation January 11, 2011

R651. Natural Resources, Parks and Recreation.
R651-224. Towed Devices.
R651-224-1. Observer Required.

The operator of a vessel which is towing a person on water skis or other devices shall be responsible for maintaining a safe course with proper lookout. The progress of the person under tow shall be reported to the vessel operator by the observer.

R651-224-2. Unlawful Methods of Towing.

No person shall operate a motorboat or have the engine of a motorboat run idle while a person is occupying or holding onto the swim platform, swim deck, swim step or swim ladder of the motorboat or while a person is being towed in a non-standing position within 20 feet of the vessel. These restrictions do not apply when a person is occupying the swim platform, swim deck, swim step or swim ladder while assisting with the docking or departure of the motorboat, while exiting or entering the motorboat, or when a motorboat is engaged in law enforcement activity.

R651-224-3. Flag Required.

The operator of a vessel shall be responsible for a flag to be displayed by the observer in a visible manner to other boaters in the area while the person to be towed is in the water, either preparing to be towed or finishing a tow. The flag shall be international orange at least 12 inches square and mounted on a handle.

R651-224-4. PFD to be Worn.

The operator of a vessel which is towing a person(s) on water skis or other devices shall require each person who is water skiing or using other devices to wear a United States Coast Guard approved personal flotation device (PFD), except an inflatable PFD may not be used.

R651-224-5. Capacity of Towing Vessel.

The operator of a vessel which is towing a person(s) on water skis or other devices shall use a vessel with sufficient carrying capacity, as defined by the manufacturer, for the occupant(s) onboard and the person(s) being towed.

R651-224-6. No Towing in Marinas.

The operator of a vessel shall not tow a person(s) in or on any towed device within a wakeless area surrounding a developed marina or launch ramp.

KEY: boating, water skiing
August 22, 2006 73-18-15
Notice of Continuation January 11, 2011

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

I. Charges for services unique to a park may be established by the park manager with approval from the region manager. All approved charges must be submitted to the Division director or designee.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $75.00 Multiple Park Permit (good for all parks)

2. $35.00 Senior Multiple Park Permit (good for all parks)

3. $200.00 Commercial Dealer Demonstration Pass

4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

5. $25 Pedestrian/Cyclist Permit (good at all parks)

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $10.00 ($5.00 for seniors)per private motor vehicle, or $2.00 per person, ($1.00 for seniors) for pedestrians or bicycles at the following park:

TABLE 1

Dead Horse Point

2. $10.00 ($5.00 for seniors) per private motor vehicle, or $5.00 per person, ($3.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Deer Creek	Jordanelle - Hailstone
Willard Bay	

3. $10.00 ($5.00 for seniors)per private motor vehicle, or $4.00 per person, ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 3

Sand Hollow

4. $9.00 ($5.00 for seniors) per private motor vehicle or $5.00 per person ($3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 4

Utah Lake

5. $9.00 ($5.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 5

East Canyon	Rockport

6. $8.00 ($4.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 6

Bear Lake Marina	Bear Lake - Rendevous
Quail Creek	

7. $7.00 ($4.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 7

Jordanelle - Rockcliff	Yuba

8. $7.00 ($4.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 8

Goblin Valley	Red Fleet
Scofield	Starvation
Steinaker	

9. $6.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 9

Coral Pink	Hyrum
Kodachrome	Palisade

10. $6.00 ($3.00 for seniors) per private motor vehicle or $2.00 per person ($2.00) for seniors), for pedestrians or bicycles at the following park:

TABLE 10

Antelope Island

11. $2.00 ($1.00 for seniors) per private vehicle at the following park:

TABLE 11

Great Salt Lake

12. $6.00 per adult, $3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and $3.00 for seniors at Utah Field House State Park.

13. $5.00 per adult, $3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively).

TABLE 12

Edge of the Cedars

14. $2.00 per person ($1.00 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 13

Camp Floyd	Territorial

15. $4.00 per person ($2.00 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 14

Anasazi

16. $3.00 per person ($1.50 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 15

Fremont	Iron Mission

17. $5.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors), for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

18. $$15.00 per OHV rider at the Jordan River OHV Center.

19. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants ($15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum cost for Group Day Use for the following parks:

TABLE 16

1. Fixed (flat) rate:

Bear Lake - East Side	$ 75.00
Bear Lake - Big Creek	$ 75.00
Bear Lake - Willow	$ 75.00
Bear Lake Marina	$ 75.00
Camp Floyd Day Use Pavilion	$ 30.00
Deer Creek Island	$100.00
Deer Creek - Sailboat	$100.00
Deer Creek - Peterson	$100.00
Deer Creek - Rainbow	$200.00
Deer Creek - Wallsburg	$300.00
East Canyon - Small	$100.00
East Canyon - Medium	$175.00
Fremont	$ 70.00
Hyrum	$150.00
Jordanelle - Hailstone Cabanas	$ 20.00
Jordanelle - Beach	$175.00
Jordanelle - Cove	$175.00
Jordanelle - Keatley	$175.00
Jordanelle - Rock Cliff North	$175.00
Jordanelle - Rock Cliff South	$175.00
Otter Creek -	$100.00
Rockport - Crandalls	$100.00
Rockport - Highland	$100.00
Rockport - Lariat Loop	$100.00
Rockport - Old Church	$250.00
Snow Canyon - Galoot Day Use	$ 75.00
Starvation - Mountain View	$150.00
Steinaker -	$150.00
Wasatch - Cottonwood	$175.00
Wasatch - Oak Hollow	$175.00
Wasatch - Soldier Hollow	$175.00
Willard - Eagle Beach (150 max)	$200.00
Willard - Pelican Beach (250 max)	$350.00
Yuba Lake - Group Day Use Area	$ 75.00

2. $3.00 per person and $2.00 per vehicle at Antelope Island State Park.

3. $2 per person with a minimum fee of $50 at Huntington, Millsite and Palisade state parks.

E. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. $10.00 with pit or vault toilets; $13.00 with flush toilets; $16.00 with flush toilets and showers or electrical hookups; $20.00 with flush toilets, showers and electrical hookups; $25.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. The following fees will apply to Overnight Group Camping:

TABLE 17

1. Reservation Fee: $10.65 at the following parks:

Bear Lake - Eastside -	$ 75.00
Bear Lake - Big Creek -	$ 75.00
Bear Lake - Willow -	$ 75.00
Bear Lake Marina -	$ 75.00
Deer Creek - Wallsburg -	$400.00
East Canyon - Large Springs -	$ 50.00
East Canyon - Mormon Flats -	$ 75.00
East Canyon - New -	$200.00
Escalante Group Area -	$ 50.00
Fremont - Group Area -	$ 70.00
Hyrum -	$150.00
Jordanelle - Beach	$250.00
Jordanelle - Cover	$250.00
Jordanelle - Keatley	$250.00
Jordanelle - Rock Cliff North	$250.00
Jordanelle - Rock Cliff South	$250.00
Kodachrome - Arches -	$ 65.00
Kodachrome - Oasis -	$ 65.00

Otter Creek -	$100.00
Rockport - Hawthorne	$150.00
Rockport - Riverside	$150.00
Rockport - Old Church	$150.00
Snow Canyon - Quail Group Area	$ 65.00
Steinaker -	$200.00
Wasatch - Soldier Hollow Chalet	$250.00
Willard - Pelican Beach (250 max)	$350.00
Yuba - Painted Rocks	$100.00
Yuba - Oasis	$100.00

2. $3.00 per person at Dead Horse (minimum - $45.00)

3. $3.00 per person at Goblin Valley, Green River No.1 and No. 2, Starvation, Palisade and Scofield (minimum) - $75.00

4. $3.00 per person and $2 per vehicle. Antelope Island (minimum) $60.00

R651-611-4. Special Fees.

A. Golf Course Fees

1. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - $13.00

b. Nine holes weekdays (except holidays) - $11.00

c. Nine holes Jr/Sr weekdays (except holidays) - $8.00

d. 20 round card pass - $180.00

e. 20 round card pass (Jr only) - $125.00

f. Promotional pass - single person (any day) - $500.00

g. Promotional pass - single person (weekdays only) - $350.00

h. Promotional pass - couples (any day) - $700.00

i. Promotional pass - family (any day) - $900.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non -player - $4.00

l. Motorized cart (18 holes) - $10.00

m. Motorized cart (9 holes) - $5.00

n. Pull carts (9 holes) - $2.00

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

q. Driving range - small bucket - $2.50

r. Driving range - large bucket - $3.50

2. Wasatch Mountain and Soldier Hollow rental and green fees.

a. Nine holes general public - $14.50

b. Nine holes general public (weekends and holidays) - $14.50

c. Nine holes Jr weekdays (except holidays) - $11.00

d. Nine holes Sr weekdays (except holidays) - $12.00

e. 20 round card pass - $240.00 - no holidays or weekends

f. Annual Promotional Pass (except holidays) - $1,000.00

g. Business Class Membership Pass - $1,000.00

h. Companion fee - walking, non-player - $4.00

i. Motorized cart (9 holes - mandatory on Mt. course) - $13.00

j. Motorized cart (9 holes single rider) - $6.50

k. Pull carts (9 holes) - $2.25

l. Club rental (9 holes) - $6.00

m. School teams - No fee for practice rounds with coach and team roster (Wasatch County only).

Tournaments are $3.00 per player.

n. Tournament fee (per player) - $5.00

o. Driving range - small bucket - $2.50

p. Driving range - large bucket - $5.00

q. Advance tee time booking surcharge - $15.00

r. Gift Certificate Fee (Per Player) - $5.00

3. Green River rental and green fees.

a. Nine holes general public - $10.00

b. Nine holes Jr/Sr weekdays (except holidays) - $8.00

c. Eighteen holes general public - $16.00

d. 20 round card pass - $160.00

e. Promotional pass - single person (any day)- $375.00

f. Promotional pass - personal golf cart - $350.00

g. Promotional pass - single person (Jr/Sr weekdays)- $275.00

h. Promotional pass - couple (any day) - $600.00

i. Promotional pass - family (any day) - $750.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non-player - $4.00

l. Motorized cart (9 holes) - $10.00

m. Motorized cart (9 holes single rider) - $5.00

n. Pull carts (9 holes) - $2.25

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

4. Golf course hours are daylight to dark

5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

6. Jr golfers are 17 years and under. Sr golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - $5.00

b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)

c. Overnight Boat Camping - $15.00 (until 2:00 p.m.)

d. Monthly - $4.00/ft.

e. Monthly with Utilities - (Bear Lake and Jordanelle - Hailstone) $7.00/ft.

f. Monthly with Utilities - (Other Parks) $5.00/ft.

g. Monthly Off Season - $3.00/ft

h. Monthly (Off Season with utilities) - $4.00/ft

2. Dry Storage Fees:

a. Overnight (until 2:00 p.m.) - $5.00

b. Monthly During Season - $75.00

c. Monthly Off Season - $50.00

d. Monthly (unsecured) - $25.00

C. Application Fees - Non - refundable PLUS Negotiated Costs.

1. Grazing Permit - $20.00

2. Easement - $250.00

3. Construction/Maintenance - $50.00

4. Special Use Permit - $50.00

5. Waiting List - $10.00

D. Assessment and Assignment Fees.

1. Duplicate Document - $10.00

2. Contract Assignment - $20.00

3. Returned checks - $30.00

4. Staff time - $50.00/hour

5. Equipment Maintenance and Repair:

- Snow Cat - $100.00/hour
- Boat - $50.00/per hour
- ATV/Snowmobile - $50.00/hour
- Other Heavy Equipment - $100.00/hour
- Vehicle - $50.00/hour

6. Researcher - $5.00/hour

7. Photo copy - $ .30/each - Black and White
- $1.00/each - Color

8. Fee collection - $10.00

E. Lodging Fees.

1. Cabins:

(a) Basic: No indoor plumbing or kitchenette

$60 per night - weekend

$40 per night - Sunday through Thursday

(b) Deluxe: Indoor plumbing and kitchenette

$80 per night - weekend

$60 per night - Sunday through Thursday

2. Yurt - (circular, domed portable tent)

$60 per night

F. Facility Rental Fees.

Jordanelle Visitor Center - Up to $2,500 per day.

R651-611-5. Reservations.

A. Camping Reservation Fees.

1. Individual Campsite $8.50

2. Group site or building rental $10.65

3. Fees identified in No. 1 and No. 2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
June 10, 2009 **79-4-802**
Notice of Continuation January 24, 2011

R652. Natural Resources; Forestry, Fire and State Lands.
R652-123. Exemptions to Wildland Fire Suppression Fund.
R652-123-100. Authority.

This rule implements Subsection 65A-8-207(1) which authorizes the Division of Forestry, Fire and State Lands to make rules to administer the Wildland Fire Suppression Fund, including rules to determine whether an acres or real property is eligible for the exemption provided in Subsection 65A-8-205(2)(b).

R652-123-200. Definitions.

1. "Accessible" - an area is considered accessible if the roads are paved, and are 20 feet wide, and has a overhead clearance of 13 1/2 feet and has a maximum slope of 10%. A Type I fire engine, as defined in this rule, must be able to access and negotiate the roads and work safely throughout the entire area.

2. "Hydrant system" - A water distribution system consisting of pipes, hydrants, and pumps used for fire suppression, with the following specifications:

a. A six inch supply feed

b. A capacity of delivering 1000 gallons per minutes at 20 pounds per square inch for two hours at each hydrant. Flow will be verified with flow test documentation.

c. Maximum hydrant spacing is no greater than 500 lineal feet.

3. "Fire Barrier" - continuous, delineated, unbroken separation of land between the wildland and the nominated area, clear of wildland vegetation where wildland fire will not carry, and that is a permanent, definable, and substantial separation. Such barriers can include but is not limited to irrigated golf courses, lakes, highways, rivers and others deemed adequate by the Division.

4. "Predominant Vegetation" - type of vegetation that provides the majority of plant cover in an area such as woody shrubs, grass, trees.

5. "Type I fire engine" - A vehicle used for fire suppression that meets National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus.

6. "Urban Vegetation" - vegetation that is managed, maintained, and irrigated in a manner that will not allow for the propagation and spread of a fire over the landscape during anytime of the year.

7. "Wildland" - an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

8. "Wildland Vegetation" - naturally occurring vegetation that is not managed, maintained and irrigated or vegetation that when cured (low live foliar moisture content), may be capable of carrying fire over the landscape.

9. "Wildland Urban Interface" -A geographical area where structures and other human development meets or intermingles with undeveloped wildland.

R652-123-300. Nomination of Exempt Areas.

For the covered year of 2007, a county may request that an area be exempt from its assessed payment into the Wildland Fire Suppression Fund by petitioning the Division on a Division approved form (Petition for Area Exemption) by September 1, 2006. For all subsequent years, the county's petition must be filed by July 1 of the year prior to the March 15 payment date. The petition shall include:

a. A description of the area including:

i. an ortho-photo quad of the area to be considered

ii. A topographic map of the area to be considered

b. An explanation with supporting documentation indicating the area meets the criteria to be exempt, with fuels, response time, access, and water availability addressed.

c. Detailed documentation of the taxable value of real property in the area to be exempt.

d. A signature of a county commissioner.

R652-123-400. Qualifying and Evaluating Exempt Areas.

1. The Division shall check for completeness of the Petition for Area Exemptions and acknowledge the receipt of the petition by date stamp.

2. The Division shall inspect the area in the petition and evaluate the nomination using the following criteria:

a. The area must be in the unincorporated area of the county, and

b. The predominant vegetation in the area is considered urban vegetation or if the predominant vegetation is wildland vegetation, there exists a fire barrier as defined in this rule between the nominated area and the wildlands, and

c. The response time of the local fire department having jurisdiction is fifteen minutes or less, and

d. The area is accessible as defined in this rule throughout the entire area such that a Type I fire engine can maneuver and work safely anywhere in the nominated area, and

e. The area is serviced by a hydrant system as defined in this rule.

R652-123-500. Notification of Exempt Areas.

1. The Division will make a final determination of exempt areas.

2. For all requests made by September 1, 2006 for the following year, the Division will notify the county commission by November 30, 2006 of those areas that were determined to be exempt, and which areas were determined to be non-exempt. For all subsequent years, the Division will give such notification by September 30.

3. The county may appeal the decision as defined in R652-8 Adjudicative Proceedings.

4. County expenditures for fire suppression that occur within areas that have been designated as exempt, are not considered Normal Fire Suppressions Costs as defined in R652-121-200(2) and will not be calculated as part of the county's approved fire suppression budget.

R652-123-600. Reporting.

Counties shall provide an annual report to the Division by March first listing:

a. A detailed listing of the taxable value of real property (land and buildings) in the exempt area of the county,

b. The total acreage of unincorporated land and the total exempt acreage of unincorporated land.

c. Any annexations of unincorporated lands by a town or city

d. County expenditures for fire suppression that occur within areas that have been approved by the Division as exempt

e. Existing exemptions from previous years

KEY: exemptions to wildland fire suppression fund, administrative procedures
August 28, 2006 65A-8-207(1)
Notice of Continuation January 24, 2011 65A-8-205(2)(b)

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, livewell or any other place of storage.

(y) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(z) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(aa) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Spearfishing (underwater)" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other devise to propel a pointed shaft to take fish from under the surface of the water.

(hh) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(ii)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, a

Saturday in June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full bag and possession limit.

R657-13-4. Fishing Contests.

(1) All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake with one fishing pole. With the purchase of a valid Utah fishing or combination license and a Utah second pole permit, or a valid Idaho fishing or combination license and an Idaho two-pole permit, an angler may fish with two poles anywhere on Bear Lake that is open to fishing. A second pole or two-pole permit must be purchased from the state of original license purchase.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).)

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one bag limit may be taken and held in possession even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Only Utah and Arizona residents are allowed to purchase reciprocal permits to fish both sides of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except:

(a) when using a valid second pole permit in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license;

(b) while fishing for crayfish without the use of fish hooks;

(c) while fishing through the ice at Flaming Gorge Reservoir. A second pole permit is not required when fishing through the ice at Flaming Gorge Reservoir, or when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir or Lake Powell.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With More than One Pole (Second Pole Permits).

(1) A person may use a second pole to take fish on all waters open to fishing provided they have an unexpired fishing or combination license and a valid second pole permit, except as provided in Subsection (5) below.

(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.

(b)(i) A second pole permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(ii) A second pole permit does not allow an angler to take more than one daily bag or possession limit.

(3) Anglers under 12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

(5) A person may use up to six lines without a second pole permit when fishing at Flaming Gorge Reservoir through the ice. When using more than two lines at Flaming Gorge Reservoir, the angler's name shall be attached to each line, pole, or tip-up, and the angler shall check only their lines.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to a valid Utah one day, seven day or annual fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination

license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset only, except as provided in Subsection (6).

(2) Use of artificial light is unlawful while engaged in underwater spearfishing, except as provided in Subsection (6).

(3) Free shafting is prohibited while engaged in underwater spearfishing.

(4) Causey Reservoir, Deer Creek Reservoir, Flaming Gorge Reservoir, Jordanelle Reservoir, Ken's Lake, Lake Powell, Lost Creek Reservoir, Pineview Reservoir (with the exception of tiger muskie), Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, Willard Bay Reservoir and Yuba Reservoir are open to taking game and nongame fish by means of underwater spearfishing from 6:00 a.m. on the first Saturday of June through November 30, except as specified in subsections 5 and 6 below. Fish Lake is open to taking game and nongame fish by means of underwater spearfishing from 6:00 a.m. on the first Saturday of June through September 15.

(5) Lake Powell is open to taking carp and striped bass by means of underwater spearfishing from January 1 through December 31.

(6) Flaming Gorge is open to taking burbot by means of underwater spearfishing from January 1 through December 31, 24 hours each day. Artificial light is permitted while engaged in underwater spearfishing for burbot at Flaming gorge. Artificial light may not be used at other waters nor may it be used when pursuing other fish species in Flaming Gorge. No other species of fish may be taken with underwater spearfishing techniques at Flaming Gorge between official sunset and official sunrise.

(7) The bag and possession limit for underwater spearfishing is the same as the bag and possession limit applied to anglers using other techniques in the waters listed in Subsection (4) above and as identified in the annual Utah Fishing Proclamation issued by the Utah Wildlife Board.

(8) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (4) above and as provided in Section R657-13-14.

(9) The waters listed above in subsection 4 are the only waters open to underwater spearfishing except that carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted while underwater spearfishing for burbot in Flaming Gorge.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(1)(c) and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing, except at Lake Powell where a gaff may be used to land striped bass. It is unlawful to possess a gaff at waters, except at Lake Powell.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, to take protected aquatic wildlife is permitted on many public waters. However, boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(f) Dead mountain sucker, white sucker, Utah sucker, redside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(10) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under R657-60, it shall be unlawful to transport any species of baitfish (live or dead) from the infested water for use as bait in any other water of the State. Baitfish are defined as those species listed in sections (5)(b),(5)(c),(5)(f) and (8).

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);
(d) Flannelmouth sucker (Catostomus latipinnis);
(e) Gizzard shad (Dorosoma cepedianum);
(f) Grass carp (Ctenopharyngodon idella);
(g) Humpback chub (Gila cypha);
(h) June sucker (Chasmistes liorus);
(i) Least chub (Iotichthys phlegethontis);
(j) Leatherside chub (Snyderichthys copei);
(k) Razorback sucker (Xyrauchen texanus);
(l) Roundtail chub (Gila robusta);
(m) Virgin River chub (Gila seminuda);
(n) Virgin spinedace (Lepidomeda mollispinis); and
(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;
(ii) Colorado River;
(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);
(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);
(v) White River (Uintah County);
(vi) Duchesne River (from Myton to confluence with Green River);
(vii) Virgin River (Main stem, North, and East Forks).
(viii) Ash Creek;
(ix) Beaver Dam Wash;
(x) Fort Pierce Wash;
(xi) La Verkin Creek;
(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);
(xiii) Diamond Fork;
(xiv) Thistle Creek;
(xv) Main Canyon Creek (tributary to Wallsburg Creek);
(xvi) Provo River (below Deer Creek Dam);
(xvii) Spanish Fork River;
(xviii) Hobble Creek (Utah County); and
(xix) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by angling, traps, bow and arrow, liftnets, dipnets, cast nets, seine, spear or underwater spearfishing in the waters specified in Subsection R657-13-9(4).

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached, - except when an angler possesses a valid second pole permit in which case two hooked lines may be used. On unhooked lines, bait is tied to the line so that the crayfish grasps the bait with its claw; and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Scofield Reservoir, Panguitch Lake and Jordanelle Reservoir, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir, Scofield Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;
(b) date caught;
(c) the certificate of registration number of the installation, pond, or short-term fishing event; and
(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Bag and Possession Limits.

(1) All waters of state fish rearing and spawning facilities

are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

KEY: fish, fishing, wildlife, wildlife law

January 4, 2011	**23-14-18**
Notice of Continuation October 11, 2007	**23-14-19**
	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-58. Fishing Contests and Clinics.
R657-58-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule to provide the standards and procedures for fishing contests and events including:

a) Type I fishing contests;
b) Type II fishing contests;
c) tagged fish contests; and
d) fishing clinics.

(2) Any violation of, or failure to comply with, any provision of this rule or any specific requirements in a Certificate of Registration issued pursuant to this rule may be grounds for revocation or suspension of the Certificate of Registration, as determined by the division.

R657-58-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and R657-13-2.

(2) In addition:

(a) "Certificate of Registration (COR)" means a license or permit issued by the division that authorizes a contest organizer to conduct a contest and spells out any special provisions and conditions that must be followed.

(b) "cold water fish species" means: mountain whitefish, Bonneville whitefish, Bear Lake whitefish, Bonneville cisco, Bear Lake cutthroat, Bonneville cutthroat, Colorado River cutthroat, Yellowstone cutthroat, rainbow trout, lake trout, brook trout, arctic grayling, brown trout, and kokanee salmon.

(c) "cull" or "high-grade" means to release alive and in good condition, a fish that has been held as part of a possession limit for the purpose of including larger fish in the possession limit.

(d) "fishing clinic" means an organized gathering of anglers for non-competitive, educational purposes that does not offer cash, awards or prizes for their individual or team catches.

(e) "live weigh" or "live weigh-in" means that fish are held in possession by contest participants and transported live to a specified location to be weighed.

(f) "possession" means active or constructive possession.

(g) "tagged fish contest" means any fishing contest where prizes are awarded for the capture of fish previously tagged or marked specifically for that contest.

(h) "Type I fishing contest" means a competitive event for warm or cold water fish species, other than a tagged fish contest, that meets any of the following criteria:

i) involves 50 or more participants or 25 or more boats;

ii) includes cash and/or prizes awarded individually or cumulatively per year at $2,000 or more for a contest or a series of contests; or

iii) utilizes a live weigh-in.

(i) "Type II fishing contest" means a competitive event for warm or cold water fish species, other than a tagged fish contest, that meets all of the following criteria:

(a) involves fewer than 50 contestants or fewer than 25 boats;

(b) includes cash and/or prizes awarded individually or cumulatively per year at less than $2,000 for a contest or a series of contests; and

(c) does not utilize a live weigh-in.

(j) "warmwater fish species" means: walleye, yellow perch, striped bass, largemouth bass, white bass, smallmouth bass, bullhead, channel catfish, black crappie, northern pike, green sunfish, wipers, bluegill, tiger muskellunge, common carp, and burbot.

R657-58-3. Certificate of Registration (COR) and General.

(1) Regardless of the size or type of contest, all boat operators must complete the Mussel Aware Boater Program online training provided at https://dwrapps.utah.gov/wex/dbconnection.jsp?examnbr=504688, and display the completed "decontamination certification form" on the dashboard of the boat transport vehicle for the duration of the fishing contest.

(2) Regardless of the size or type of contest, the contest sponsor shall verify and confirm that all boat operators participating in the fishing contest possess a completed Mussel Aware Boater Program "decontamination certification form".

(3) A COR is required for all Type I fishing contests and all tagged fish contests. The requirements are listed in sections R657-58-4 through R657-58-6.

(4) A COR is not required for Type II fishing contests and fishing clinics.

(5) A COR is valid for only one fishing tournament/tagged fish contest on one water.

(6) The division may request public comment before issuing a COR if, in the opinion of the division, the proposed contest has potential impacts to the public or could substantially impact a public fishery.

(7)(a) A COR may be denied for:

(i) failure to comply with the fishing proclamation and rule;

(ii) potential for resource damage;

(iii) location;

(iv) occurrence on a legal holiday or Free Fishing Day;

(v) public safety issues;

(vi) conflicts with the public;

(vii) failure to adequately protect state waters from invasive species;

(viii) problems with the applicants prior performance record; and

(ix) failure to comply with other state laws, including those applying to raffles and lotteries in Utah.

(b) The reason for denial will be identified and reported to the applicant in a timely manner. The division may impose conditions on the issuance of the Certification of Registration in order to achieve a management objective or adequately protect a fishery. Any conditions will be listed on the COR.

(8) All COR applications submitted for Type I fishing contests must include a written protocol for participants to disinfect boats and equipment to prevent the spread of aquatic nuisance species. The protocol must be consistent with division policy and rule.

(9)(a) COR applications are available at all division offices and online at the division's website.

(b) Applications must be received by the division at least 45 days prior to the contest. In some cases a public comment process may alter the 45-day COR review period.

(c) Variances to the COR review period may only be granted by the director.

(10) A COR application must include:

(a) a copy of proposed rules for the contest, and

(b) a complete schedule of entry fees, cash awards and prize values.

(11) Anyone conducting a Type I fishing contest or tagged fish contest must complete a post-contest report and that report must be received by the division within 30 days after the event is completed.

(12) Anyone conducting a Type I fishing contest or tagged fish contest who fails to obtain a COR or to follow the rules set by the division may be prohibited from conducting any fishing contests, and may be subject to other penalties.

R657-58-4. Requirements for Type I Fishing Contests for Warm Water Fish Species.

(1) A COR from the Division of Wildlife Resources is required for any Type I fishing contest for any warm water fish

species.

(2) All participants' boats must be readily identifiable as such at a distance of 100 yards.

(3) Contestants may not possess fish species, numbers of fish, or sizes of fish that are in violation of the proclamation approved by the Utah Wildlife Board.

R657-58-5. Requirements for Type I Fishing Contests for Cold Water Fish Species.

(1) A COR from the division is required for all Type I fishing contests for cold water fish species.

(2) Type I fishing contests for cold water fish may not:

(a) involve more than 200 participants.

(b) offer more than $2,000 in total prizes.

(c) utilize live weigh-ins.

(3) Type I fishing contests for cold water fish species are prohibited on waters where the Wildlife Board has imposed more restrictive special harvest rules for targeted cold water fish species including tackle restrictions, size restrictions, and other exceptions to the general fishing regulations, except at Scofield Reservoir where Type 1 fishing contests are allowed for rainbow trout only.

(4) There is no limit to the number of participants or total prizes at Flaming Gorge and Echo Reservoirs.

(5) Type I fishing contests for cold water fish species may not be held

(a) on Free Fishing Day except at Echo Reservoir.

(6) Fish taken in Type I cold water fishing contests may not be culled.

R657-58-6. Requirements for Tagged Fish Contests.

(1) A COR from the Division of Wildlife Resources is required to conduct any tagged fish contest, regardless of number of contestants or value of prizes or awards.

(2) All COR application for a tagged fish contest must be received by the division between December 1st and December 31st of the year prior to when the contest is to be held.

(3) If more than one application is received for a water in a year then a drawing will be held to select the applicant to receive the COR.

(4) Only one tagged fish contest per year may be held on any water approved for tagged fish contests.

(5) Tagged fish contests must have the start date and end date identified on the COR Application.

(6) Tagging of fish for tagged fish contests must be conducted only by division personnel, or by designated representatives working under the direct supervision of the division.

(7) Without prior authorization from the division, it is prohibited to:

(a) tag, fin-clip or mark fish in any way, or

(b) introduce tagged, fin-clipped or marked fish into a water.

(8) The organizer of a tagged fish contest will assume all responsibility for the contest and the purchase of tags and tagging equipment.

(9) Tagged fish contests are permitted only on the following waters and only for the fish species listed for those waters:

(a) Big Sandwash (Duchesne County) for trout;

(b) Deer Creek Reservoir (Wasatch County) for trout;

(c) East Canyon Reservoir (Morgan County) for smallmouth bass;

(d) Echo Reservoir (Summit County) for yellow perch, trout;

(e) Flaming Gorge Reservoir (Daggett County) for burbot, lake trout;

(f) Gunlock Reservoir (Washington County) for crappie, bass;

(g) Hyrum Reservoir (Cache County) for yellow perch, trout;

(h) Lake Powell (Garfield, Kane and San Juan counties) for striped bass;

(i) Jordanelle Reservoir (Wasatch County) for yellow perch, trout, bass;

(j) Moose Pond (Daggett County) for trout;

(k) Millsite Reservoir (Emery County) for trout;

(l) Otter Creek Reservoir (Piute County) for trout;

(m) Palisade (Sanpete County) for trout;

(n) Piute Reservoir (Piute County) for trout;

(o) Quail Creek Reservoir (Washington County) for trout, bass;

(p) Red Fleet Reservoir (Uintah County) for trout, bluegill;

(q) Rockport Reservoir (Summit County) for yellow perch, trout;

(r) Sand Hollow Reservoir (Washington County) for bluegill, bass;

(s) Scofield Reservoir (Carbon and Utah counties) for rainbow trout;

(t) Starvation Reservoir (Duchesne County) for walleye;

(u) Steinaker Reservoir (Uintah County) for trout, bluegill;

(v) Utah Lake (Utah County) for white bass, carp;

(w) Willard Bay (Box Elder County) for carp, hybrid striped bass; and

(x) Yuba Reservoir (Juab and Sanpete counties) for walleye.

KEY: fish, fishing, wildlife, wildlife law

January 4, 2011 **23-14-18**
23-14-19
23-19-1
23-22-3

R708. Public Safety, Driver License.
R708-16. Pedestrian Vehicle Rule.
R708-16-1. Authority.

(1) This rule is authorized by Section 41-6a-1011.

R708-16-2. Purpose.

(1) To promote and regulate safety in the use of a pedestrian vehicle, for both the individual using the pedestrian vehicle, and any person or property around, or about, the area being used by a pedestrian vehicle. Specific conditions may be required prior to giving authorization to operate a pedestrian vehicle.

(2) To require a person to apply for authority to operate a pedestrian vehicle for any such vehicle with an excess of .5 brake horsepower capable of developing a speed of more than 8 mph and being used in an area other than a sidewalk or places where pedestrians are allowed.

(3) To review on an individual basis each application for authorization to operate a pedestrian vehicle according to need of the physically disabled person and pursuant to and in accordance with applicable rules adopted by the commissioner for the Department of Public Safety.

R708-16-3. Application and Requirements for Authorization to Operate a Pedestrian Vehicle.

(1) Application for authorization to operate a pedestrian vehicle shall be made at any field office of Driver License Division and shall require the following:

(a) Name, age and D.O.B., sex, address, description of disability.

(b) Type of pedestrian vehicle to be used must comply with the requirements specified in Section 41-6a-1011.

(c) Statement of intended use of the pedestrian vehicle. Intended use should not create an undue safety hazard.

(d) A functional ability evaluation and a medical opinion that physical disability would not affect the safe operation of the pedestrian vehicle.

(e) All applicants must sign a waiver accepting all responsibility for being allowed to operate a pedestrian vehicle.

(f) Any physically disabled person, under the age of 18, must have parental or guardian approval and sign a waiver accepting responsibility for being allowed to operate a pedestrian vehicle.

(g) Each individual making application for use of a pedestrian vehicle must demonstrate his/her ability to safely operate the pedestrian vehicle.

(2) Authorization to operate a pedestrian vehicle shall be in the form of a certificate issued by the department.

(3) Operation of pedestrian vehicles must comply with all pedestrian, bicycle, or vehicle traffic laws as applicable to the type of pedestrian vehicle used. This includes lighting requirements if used during hours of darkness.

(4) The department may inspect intended routes and uses of vehicles and apply restrictions on use of pedestrian vehicles as may be necessary for the preservation of public safety.

(5) Authorization to operate a pedestrian vehicle must be reviewed every five years.

R708-16-4. Special Requirements for Operation of a Pedestrian Vehicle.

(1) Passengers are prohibited on pedestrian vehicles except that one passenger, as designated by the department and indicated on the pedestrian vehicle authorization document, may be allowed if inclusion of the passenger does not create a negative effect on the safe operation of the pedestrian vehicle, and if the pedestrian vehicle is designed to accommodate a passenger.

(2) Every pedestrian vehicle must display a Standard International "Handicapped" emblem inset on a standard slow moving vehicle designation.

(3) The department may require other markings or equipment as may be determined on an individual basis.

R708-16-5. Fee.

(1) The department may charge a $13 fee to cover administrative costs of issuing a permit to operate a pedestrian vehicle.

(2) All fees collected for permits shall remain in the department as a dedicated credit.

R708-16-6. Denial, Suspension, and Revocation of Authorization to Operate a Pedestrian Vehicle.

(1) Authorization to operate a pedestrian vehicle may be denied, suspended or revoked when, in the opinion of the department, it may not be in the best interest of public safety to issue or continue such authorization.

R708-16-7. Adjudicative Proceedings.

(1) All adjudicative proceedings including but not limited to the application for and denial, suspension or revocation of authorization to operate a pedestrian vehicle, shall be governed by the adjudicative proceedings set forth in the rule identified as R708-17. The adjudicative proceedings set forth in R708-17 are hereby incorporated into this rule by this reference.

KEY: traffic regulations
July 8, 2008 41-6a-1011
Notice of Continuation January 31, 2011

R708. Public Safety, Driver License.
R708-18. Regulatory and Administrative Fees.
R708-18-1. Authority.

This rule is authorized by Section 53-3-104(2), 53-3-105, 53-3-808, 53-3-905 and Subsection 63J-1-301(2).

R708-18-2. Definitions as Used in this Chapter.

(1) "Accident Report" means an officer's report of an accident as described under Subsection 41-6a-402.

(2) "Accompanying data" means supplemental accident reports or addenda there to.

(3) "Driving Record", more commonly known as a Driver License Record (DLR) means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

(a) Driver's name;
(b) License certificate number;
(c) Driver's date of birth;
(d) Driver's zip code;
(e) Member of military;
(f) Reportable arrests and convictions;
(g) Reportable notices from courts indicating failure to comply with terms of a citation or failure to comply with terms set by the court, pursuant to UCA 53-3-221(2) and 53-3-221(3).
(h) Reportable department actions;
(i) Driving Privilege Status;
(j) License certificate issue/expiration dates; and
(k) License certificate class/type/endorsement.

(4) Driving Record - "Certified Copy" means an authenticated Driving Record and/or accident report and/or accompanying data prepared under the seal of the division. (Other records or information may be included only under order or rule of the court.)

(5) "Photocopies" means the mechanical reproduction of an original digitized or filmed document.

(6) "Recording" means a verbatim magnetic tape or digitized recording of sworn, or unsworn testimony, or information.

R708-18-3. Fees.

The Driver License Division charges user fees for some services. A schedule of these fees is available for public examination at any Driver License office location. These fees are set by the legislature in Section 53-3-105, 808, and 905, and in the annual appropriations act as recorded in "The 'Laws of Utah' as passed at the General Session of the Legislature".

R708-18-4. Exemptions.

The fees established may not be charged to any municipal, county, state or federal agency as defined in Subsection 53-3-105(33)(b).

R708-18-5. Records.

All fees charged shall be receipted and recorded under normal accounting principles established by the Driver License Division.

KEY: driver education, licensing, fees
October 27, 2005 **63J-1-301(2)**
Notice of Continuation January 31, 2011 **41-6a-402**
53-3-104(2)
53-3-105
53-3-808
53-3-905
53-3-221(2)
53-3-221(3)

R708. Public Safety, Driver License.
R708-19. Automobile No-Fault Self-Insurance.
R708-19-1. Authority.

This rule is authorized by Section 41-12a-201.

R708-19-2. Purpose.

The purpose of this rule is to set forth the methods approved by the department for providing the security required by Sections 41-12a-301 and 407. This rule is not intended to exclude any other methods of establishing equivalent security which may be approved by the department.

R708-19-3. Amount of Deposit, Bond, or Letter of Credit.

The Department requires an insurer to submit a certificate of self-funded coverage by depositing cash, a bond or letter of credit with the Department as per Section 41-12a-407.

R708-19-4. Approved Methods.

(1) The following methods are approved by the department for meeting the requirements of providing equivalent security.

(a) Depositing with the department an amount in cash at least equal to minimum amounts specified hereinafter. The cash shall be held on deposit in accordance with Section 41-12a-406 by the Utah State Treasurer to satisfy approved claims and any executions on any judgment issued against such person making said deposit for damages or benefits provided under the Financial Responsibility of Motor Vehicle Owners and Operators Act. The deposit shall not be subject to attachment or executions except as shall arise from the enforcement of the Act.

(b) Posting with the department a bond, on a form approved by the department from a surety company authorized to do business in this state, providing for payment at least equal to minimum amounts specified hereinafter to assure payment of damages and benefits imposed by the Financial Responsibility of Motor Vehicle Owners and Operators Act.

(c) Delivering to the department a letter of credit, which is irrevocable as to beneficiary for one year, which covers the same amounts specified hereinafter to assure payment of damages and benefits imposed by the Financial Responsibility of Motor Vehicle Owners and Operators Act (41-12a-101).

R708-19-5. General Rules.

(1) Each owner providing the equivalent security shall:

(a) Complete and have notarized and file an application obtained from and approved by the department.

(b) File an application for approval each year.

(c) Submit a detailed report to the department within 15 days after each accident for which benefits are claimed under this act, and

(d) Be subject to the same requirements and entitled to the same privileges as provided for insurance companies.

(e) Maintain a fleet of not less than 25 vehicles.

(2) In lieu of the foregoing, an owner may supply a certified copy of the Decision to Grant Self-Insurance from the Interstate Commerce Commission.

KEY: self insurance plans

1992	**41-12a-201**
Notice of Continuation January 31, 2011	**41-12a-406**
	41-12a-407

R708. Public Safety, Driver License.
R708-20. Motor Vehicle Accident Prevention Course Standards.
R708-20-1. Authority and Purpose.

Section 31A-19a-211 provides for an appropriate reduction of automobile insurance premiums for persons 55 years of age or older who successfully complete a motor vehicle accident prevention course.

The purpose of this rule is to establish procedures and standards for agencies or organizations who may conduct motor vehicle accident prevention courses as prescribed by this section.

R708-20-2. Definitions.

"Course" means a motor vehicle accident prevention course.

"Department" means the Department of Public Safety.

"Instructor" means an individual who has been approved by the course sponsor for the purpose of conducting an approved motor vehicle accident prevention course.

"Sponsor" means an organization or agency that conducts a motor vehicle accident prevention course.

R708-20-3. Motor Vehicle Accident Course Application For Approval.

Each sponsor who proposes to offer a course to the public for insurance reduction must submit a completed application to the department for approval on a form approved by the department.

A sponsor may file an application for approval at any time.

In order to be approved, a sponsor must comply with the following requirements:

1. The course must provide for a minimum of four hours classroom instruction which must be completed within a 30-day period from the date of enrollment.

2. The course curriculum shall include, but is not limited to, the following subjects:

a. How impairment of visual and audio perception affects driving performance and how to compensate for that impairment.

b. The effects of fatigue, medications, and alcohol on driving performance, when experienced alone or in combination, and precautionary measures to prevent or offset ill effects.

c. Updates on rules of the road and equipment, including but not limited to, safety belts and safe, efficient driving techniques under present day road and traffic conditions.

d. How to plan travel time and select routes for safety and efficiency.

e. How to make crucial decisions in dangerous, hazardous, and unforeseen situations.

f. The effects of physiological and physical problems that increase with age, their impact on driving, and how to compensate for these impairments, if possible.

3. Provide the department with all materials, manuals, and curriculum used in the course.

4. Provide an instructor preparation course to all instructor candidates. Only instructors who have completed this course may be employed by the sponsor.

5. Provide research documentation showing evidence of the effectiveness of the course. In the case of a course being new and having no documentation, evidence shall be submitted to the department when it becomes available.

6. Provide an address and telephone number where the course will be given and which may be disseminated to the public.

7. Designate an individual as representative of the course sponsor who is responsible for liaison with the department and include the representative's address and telephone number.

Course approval shall be valid for one year. At the end of one year a sponsor may make a renewal application on a form approved by the department. When approval is given, a certificate will be issued by the department to the sponsor upon approval of the course.

R708-20-4. Withdrawal or Denial of Approval.

Approval to conduct a course may be denied or withdrawn if it is determined by the department that a sponsor has failed to comply with any provisions of Section 31A-19a-211 or this rule.

R708-20-5. Monitoring of Course.

The sponsor will allow and cooperate with the department's monitoring of any curriculum or course instruction conducted for insurance reduction including the scheduling of on-site visits by department representatives to perform audits of course records, course curriculum, course instruction and the inspection of classroom facilities, in order to assure compliance of standards as prescribed by this rule.

KEY: motor vehicles, accident prevention
January 2, 1997 31A-19a-211
Notice of Continuation January 31, 2011

R708. Public Safety, Driver License.
R708-33. Electric Assisted Bicycle Headgear.
R708-33-1. Authority.

(1) This rule is promulgated in accordance with the electric assisted bicycle operators headgear specifications and standards as required by Subsection 41-6a-1505.

R708-33-2. Purpose.

(1) The purpose of this rule is to establish the specifications and standards for protective headgear while riding electric assisted bicycles.

R708-33-3. Operator Headgear Requirement for Electric Assisted Bicycles.

(1) In accordance with Subsection 41-6a-1505, all operators of electric assisted bicycles are required to wear protective headgear. The protective headgear must meet the specifications and standards as listed in Section R708-33-4.

R708-33-4. Headgear Specifications and Standards for Operators of Electric Assisted Bicycles.

(1) The standards and specifications as contained in the publication entitled "1995 Standard For Protective Headgear" as published by Snell Memorial Foundation, INC., 7 Flowerfield, Suite 28, St. James, New York 11780-1514, 1995 edition, are hereby incorporated by reference.

R708-33-5. Copies Are Retained.

(1) Copies of the incorporated-by-reference document, as listed above, is available for review at two locations: The Division of Administrative Rules, 3120 State Office Building, Salt Lake City, Utah 84114; and at the Utah Department of Public Safety, Driver License Division, 4501 South 2700 West, Salt Lake City, Utah 84119.

KEY: electric assisted bicycle headgear
June 21, 1996 41-6a-1505
Notice of Continuation January 31, 2011

R708. Public Safety, Driver License.
R708-38. Anatomical Gift.
R708-38-1. Purpose.

The purpose of this rule is to define the process for authenticating an applicant's intent to make an anatomical gift (organ donation) when applying for a driver license or identification card excluding renewal by mail.

R708-38-2. Authority.

This rule is authorized by Subsection 53-3-205(16)(a).

R708-38-3. Process.

An applicant who desires to make an anatomical gift shall authenticate their indication of intent by:

(a) applying for a driver license or identification card;

(b) marking the appropriate place on the application form indicating a desire to make an anatomical gift;

(c) signing the application in person or by some other electronic means affirming that the information entered is true and correct; and

(d) submitting the completed application at a driver license office or submitting the completed application by electronic means when available.

KEY: anatomical gift

July 3, 2001	**53-3-205**
Notice of Continuation January 31, 2011	**26-28-102**
	26-28-105

R708. Public Safety, Driver License.
R708-42. Driver Address Record.
R708-42-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for requesting and disclosing a Driver Address Record in accordance with Subsection 53-3-109(1)(c)(ii).

R708-42-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-42-3. Definitions.

(1) "Driver Address Record" (DAR), means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

(a) driver's name;

(b) license certificate number;

(c) driver's current residential address; and

(d) name and license certificate of a person with a license certificate residential address that is the same as the driver requested.

R708-42-4. Procedures.

(1) Upon receipt of a request for a DAR pursuant to Subsection 53-3-109(1)(c)(ii), the division will search its driver license files to compile and furnish a DAR on any person licensed in the state of Utah. A qualified requester may only obtain a DAR for a person who has obtained motor vehicle insurance, from the qualified requester pursuant to Title 31A Chapter 22 Part 3.

(2) DAR's shall only be released to qualified requesters in accordance with the Federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109(1)(c)(ii), and Title 63G, Chapter 2.

R708-42-5. Requirements.

(1) In order to receive a DAR, the requester must:

(a) provide acceptable proof of identification that they are a qualified requester under Subsection 53-3-109(1)(c)(ii);

(b) enter into a contract with the division or its designated provider to obtain a DAR;

(c) provide the driver's name, Utah license certificate number and address;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information on an DAR; and

(f) comply with auditing processes and procedures as required by the division or its designated provider.

R708-42-6. Electronic Transactions.

Requests for DARs will be transacted electronically as approved by the division.

KEY: driver address record
August 8, 2006 53-3-109(1)(c)
Notice of Continuation January 20, 2011

R708. Public Safety, Driver License.
R708-43. YES or NO Notification.
R708-43-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for verifying personal identifying information in accordance with Subsection 53-3-109(1)(c)(iii).

R708-43-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-43-3. Definitions.

(1) "Yes or No Verification (YON)" means an electronic notification that information submitted by a requester matches the information on the driver license division database. For this purpose Yes verifies a match of (a) through (c), and No indicates one or more items do not match the database information, including:

(a) name;

(b) license certificate or identification card number; and

(c) date of birth.

R708-43-4. Procedures.

(1) Upon receipt of a request for verification pursuant to Subsection 53-3-109(1)(c)(iii), the division will search the driver license division database and furnish a YON on any person who has a license certificate or identification card in the state.

(2) The YON contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109, and Title 63G, Chapter 2.

R708-43-5. Requirements.

(1) A YON shall only be released to qualified requesters in accordance with the DPPA and Subsection 53-3-109(1)(c)(iii).

(2) In order to receive a YON, the requester must:

(a) provide acceptable proof that they are a depository institution as defined in Section 7-1-103;

(b) enter into a contract with the division or its designated provider to obtain a YON;

(c) provide the name, Utah license certification number or identification card number and date of birth of the person who is the subject of the request;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information provided; and

(f) comply with auditing processes and procedures required by the division or its designated provider.

R708-43-6. Electronic Transactions.

Requests for a YON will be transacted electronically as approved by the division.

KEY: driver license verification
June 8, 2007 53-3-109(1)(c)
Notice of Continuation January 20, 2011

R708. Public Safety, Driver License.
R708-44. Citation Monitoring Service.
R708-44-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for disclosing personal identifying information in accordance with Section 53-3-109(3).

R708-44-2. Authority.

This rule is authorized by Section 53-3-109(7)(f).

R708-44-3. Definitions as Used in This Chapter.

"Citation Monitoring Service (CMS)" means an electronic service whereby the Driver License Division database is monitored on a regular basis to determine if a reportable moving violation has been entered on a specific driving record within the month prior to the date of the request. The requestor will receive a "YES or NO" response that indicates whether a reportable moving violation has been entered on the driver's record during the previous month. If the information submitted by the requestor does not match a driver's record on the database, the requestor will receive an unable to locate (UTL) response.

R708-44-4. Procedures.

(1) Upon receipt of a request for a notification pursuant to Section 53-3-109(3), the division will provide this monitoring service on any person who has a Utah license certificate.

(2) The Driver License Division database contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Section 53-3-109 and Title 63G, Chapter 2 (Government Records Access and Management Act).

R708-44-5. Requirements.

(1) CMS is only available to qualified requesters in accordance with the DPPA and Section 53-3-109(3).

(2) In order to be eligible for the CMS, the requester must:

(a) provide acceptable proof that they are an insurer as defined under Section 31A-1-301, or a designee of an insurer as defined under Section 31A-1-301;

(b) enter into a contract with the division or its designated provider to obtain this service;

(c) provide the name, date of birth, and Utah license certificate number for the person for which they are seeking monitoring and notification;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information on the Driver License Division database; and

(f) comply with auditing processes and procedures required by the division or its designated provider.

R708-44-6. Electronic Transactions.

The Citation Monitoring Service will be transacted electronically, as approved by the division.

KEY: driver license, motor vehicle record, citation monitoring service
August 8, 2006 53-3-109(3)
Notice of Continuation January 20, 2011

R710. Public Safety, Fire Marshal.
R710-2. Rules Pursuant to the Utah Fireworks Act.
R710-2-1. Adoption.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; providing a list of approved class C common state approved fireworks for retail sale; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.4 National Fire Protection Association (NFPA), Standard 160, Standard for the Use of Flame Effects Before an Audience, 2011 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.5 North American Fire Arts Association (NAFAA), Performer Safety Guidelines, Revision 2.1, updated July 5, 2005, as published by the North American Fire Arts Association, except as amended by provisions listed in R710-2-10, et seq.

1.6 Incendiary Circus, Safety Manual, September 2006, as published by the Incendiary Circus, LLC, except as amended by provisions listed in R710-2-10.et seq.

1.7 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-2-2. Definitions.

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

2.3 "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

2.4 "ICC" means International Code Council, Inc.

2.5 "IFC" means International Fire Code.

2.6 "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

2.7 "NAFAA" means the North American Fire Arts Association.

2.8 "NFPA" means National Fire Protection Association.

2.9 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.10 "Person" means an individual, company, partnership or corporation.

2.11 "Pre-packaged means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.12 "Resale" means the act of reselling class B or C explosives to a new party.

2.13 "SFM" means the State Fire Marshal.

2.14 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.15 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.16 "UCA" means Utah Code Annotated.

R710-2-3. General Requirements.

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

3.6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

R710-2-4. Indoor Sales.

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units, with unexposed fuses, within a permanent structure.

4.5 Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

4.6 Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not

known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

4.7 Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

4.8 Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-5. Temporary Stands, Trailers and Tents.

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

R710-2-6. List of Approved Class C Common State Approved Explosives.

6.1 The State Fire Marshal shall test and approve any Class C common state approved explosive before it is placed on the approved list as required in UCA 53-7-222(1).

6.2 The State Fire Marshal shall publish a list of approved class C common state approved explosives each year as required in UCA 53-7-222(1)(b).

6.3 The testing shall be conducted annually or as needed.

6.4 Any firework that bears the "California State Fire Marshal Safe and Sane Registered Fireworks Seal" is exempted from the testing process and can be placed on the approved list.

R710-2-7. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.

7.1 Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 9 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 9 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 The applicant shall indicate on the application which license the applicant wishes to apply for:

7.10.1 Display Operator

7.10.2 Special Effects Operator

7.10.3 Flame Effects Operator

7.10.4 Flame Effects Performing Artist

7.11 Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

7.11.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.11.2 The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination.

7.11.3 Submit written verification with the application of having completed a display operators safety class, a special effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM.

7.11.4 Submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.12 Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

7.12.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.12.2 The applicant is allowed to use the statute, the administrative rule, NFPA 160, the NAFAA Performer Safety Guidelines, and the Incendiary Circus Safety Manual.

7.12.3 Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

7.12.4 Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the

SFM.

7.13 The written examination stated in Section 7.11.1 or 7.12.1 shall be valid for five years from the date of the examination.

7.14 Applicants seeking an original license as stated in Sections 7.11 of these rules, may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days. By the end of the 45 day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

7.15 At the end of the five year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.16 of these rules.

7.16 After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

7.16.1 Complete one show or performance annually

7.16.2 Attend an operator safety class or flame effects performing artist meeting annually

7.16.3 Work with another licensed display operator, special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

7.17 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Sections 7.11 or 7.12 of these rules.

7.18 Every person who wishes to secure a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

7.19 Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten (10) working days after the conclusion of any show and send it to the State Fire Marshal. If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.

R710-2-8. Importer or Wholesaler License.

8.1 Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

8.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

8.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

8.4 The SFM may refuse to renew any license pursuant to Section 8 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 8 of these rules.

8.5 Every licensee shall notify the SFM within thirty (30) days of any change of address or location.

8.6 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

8.7 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

8.8 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

R710-2-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

9.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 The person of applicant provides material misrepresentation or false statement on the application.

9.2.3 The person or applicant refuses to allow inspection by the AHJ.

9.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class.

9.2.5 The person or applicant has been convicted of one or more federal, state or local laws.

9.2.6 Failure to accurately complete the After Action Report.

9.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

9.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

9.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

9.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

9.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

9.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted

pursuant to UCA, Section 63G-4-402.

R710-2-10. Amendments and Additions.

10.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

10.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

10.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

10.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

10.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

10.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

10.2.1.3.1 In self storage units where the owner allows it.

10.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

10.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

10.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

10.2.1.3.5 Wholesalers warehouse.

10.2.1.3.6 An approved Group M occupancy.

10.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

10.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

10.2.2 All other periods of time, except those stated in Section 9.2.1 of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

10.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

10.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

R710-2-11. Fire Department Displays.

11.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

11.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.

11.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display. A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

11.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

KEY: fireworks

January 21, 2011 **53-7-204**
Notice of Continuation June 4, 2007

R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.
R710-9-1. Title, Authority, and Adoption of Codes.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.

1.4 There is further adopted as part of these rules the following codes which are incorporated by reference:

1.4.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act, except as amended by provisions listed in R710-9-10, et seq.

1.5 Copies of the above code are on file in the Division of Administrative Rules and the Office of the State Fire Marshal.

R710-9-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

2.5 "Division" means State Fire Marshal.

2.6 "IFC" means International Fire Code.

2.7 "LFA" means Local Fire Authority.

2.8 "Restricted Account" means Firefighter Support Restricted Account.

2.9 "SFM" means State Fire Marshal or authorized deputy.

2.10 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.11 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Conduct of Board Members and Board Meetings.

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Fire Advisory and Code Analysis Committee.

6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

6.2.1 A representative from the State Fire Marshal's Office.

6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

6.2.4 A representative from the Department of Health.

6.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

6.2.6 A representative from the Department of Human Services.

6.2.7 A representative from Forestry, Fire and State Lands.

6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

6.5 The Council shall select one of it's members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-7. Enforcement of the Rules of the State Fire Marshal.

7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

7.4.2 Public and private schools.

7.4.3 Privately owned colleges and universities.

7.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

7.4.5 Places of assembly as defined in Section 9-2 of this rule.

7.5 The Board shall require prior to approval of a grant the following:

7.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-8. Fire Prevention Board Budget and Amendment Sub-Committees.

8.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

8.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

8.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-9. Firefighter Support Restricted Account.

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of it's members to act in the position of chair, the chair shall serve for a term of one year, and the chair shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

R710-9-10. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

10.1 IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: 903.3.1.1.2 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction in the dwelling unit portion of an occupancy, installed in accordance with NFPA 13, is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

10.2 IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: 903.3.1.2.2 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction in the dwelling unit portion of an occupancy, installed in accordance with NFPA 13R, is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

10.3 IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: 903.3.1.3.1 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction installed in accordance with NFPA 13D, is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

10.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Antifreeze Replacement. Whenever the automatic sprinkler system protecting residences and dwelling units of mixed occupancies that use antifreeze is drained, the replacement antifreeze shall be properly mixed and tested, but shall not exceed a maximum concentration of 40% propylene glycol or a maximum concentration of 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

R710-9-11. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-12. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-13. Adjudicative Proceedings.

13.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

13.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

13.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

13.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

13.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

13.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

13.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

13.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, law
January 9, 2011 53-7-204
Notice of Continuation June 8, 2007

R714. Public Safety, Highway Patrol.
R714-600. Performance Standards for Tow Truck Motor Carriers.
R714-600-1. Authority.

This rule is authorized by Subsection 41-6a-1406(10) which provides that the department shall make rules setting the performance standards for towing companies to be used by the department.

R714-600-2. Purpose.

The purpose of this rule is to establish procedures for the designation and dispatch of tow truck motor carriers when a sworn officer requests the removal and towing of a motor vehicle.

R714-600-3. Definitions.

(1) Definitions used in the rule are found in Sections 41-6a-102, 53-10-102, 69-2-2, and 72-9-102.

(2) In addition:

(a) "department dispatch center" means a dispatch center which is operated or maintained by the department;

(b) "department dispatcher" means an employee of a dispatch center operated or maintained by the department whose primary duties are to receive calls for emergency police, fire, and medical services, and to dispatch the appropriate personnel and equipment in response to the calls;

(c) "dispatch center" means a facility which acts as a public safety answering point and provides emergency dispatch and communications support to sworn officers;

(d) "sworn officer" means a peace officer who is employed by the department; and

(e) "tow truck motor carrier" means any company that provides for-hire, private, salvage, or repossession towing services and includes all of the company's agents, officers, representatives and employees.

R714-600-4. Dispatch of a Tow Truck Motor Carrier.

(1) When a sworn officer determines that a vehicle must be towed, the sworn officer shall contact the dispatch center which provides service for that area and request that a tow truck motor carrier be dispatched.

(2) The sworn officer will provide the dispatch center with the location, make, model and license number of the vehicle that must be towed.

(3) The dispatch center shall determine which tow truck motor carrier to dispatch according to the policies and practices of that particular dispatch center.

(4) Nothing in this rule precludes the owner of a vehicle from contacting a tow truck motor carrier directly to remove the vehicle.

R714-600-5. Designation of Tow Truck Motor Carriers by the Department.

(1) Each department dispatch center will maintain a call out list of tow truck motor carriers in the area who are certified according to the requirements found in Title 72, Chapter 9, Part 6, and R909-19.

(2) The call out list of tow truck motor carriers will contain the following information on each tow truck motor carrier:

(i) the business name and phone number of the tow truck motor carrier;

(ii) the names and phone numbers of all tow truck operators;

(iii) after-hours contact information for the tow truck motor carrier; and

(iv) whether the tow truck motor carrier has the ability to perform any special services.

(3) A tow truck motor carrier must notify the department dispatch center if the tow truck motor carrier is out of service or not available so the department dispatch center may temporarily remove the tow truck motor carrier from the call off list.

(4)(a) A department dispatch center may permanently remove a tow truck motor carrier from the call out list, after notice and an opportunity to respond to the allegations, if any of the following occur:

(i) a tow truck motor carrier is no longer certified;

(ii) a tow truck motor carrier is operating in violation of the law or has engaged in practices which are a violation of law;

(iii) a tow truck motor carrier's continued unavailability disrupts the operation of a department dispatch center;

(iv) a tow truck motor carrier routinely fails to respond to requests for service in a timely manner; or

(v) a tow truck motor carrier refuses to retrieve abandoned vehicles.

R714-600-6. Dispatch of Tow Truck Motor Carriers by the Department.

(1)(a) When a sworn officer contacts a department dispatch center and requests that a tow truck motor carrier be dispatched, a department dispatcher will immediately contact a tow truck motor carrier on the call out list.

(b) Department dispatchers will contact tow truck motor carriers in the order they appear on the call out list.

(2) Department dispatchers will provide the tow truck motor carrier with information regarding the nature of the call so the tow truck motor carrier may determine if the tow truck motor carrier is able to handle the call.

(3)(a) If a tow truck motor carrier fails to respond when contacted by a department dispatcher or the tow truck motor carrier is unable to respond to the call, the department dispatcher will contact the next tow truck motor carrier on the call out list.

(b) A tow truck motor carrier who fails to respond or who is unable to respond to a call, will not be contacted by a department dispatcher until the next time that the tow truck motor carrier's name appears on the call out list.

(4)(a) If a department dispatcher contacts a tow truck motor carrier who is available but is not equipped for the specific type of service requested, the department dispatcher will continue to contact tow truck motor carriers on the call out list until a tow truck motor carrier is found who is equipped to handle the request for service.

(b) A tow truck motor carrier's inability to provide requested services for lack of equipment, does not affect the tow truck motor carrier's place on the call out list.

(5) If a tow truck motor carrier responds to a call from dispatch but tow services are later determined not to be necessary, the tow truck motor carrier will be contacted the next time that tow services are needed.

(6) If a tow truck motor carrier responds to a department dispatcher's request for service and arrives at the location specified by the sworn officer, the tow truck motor carrier must provide the requested services unless the tow truck motor carrier is mechanically unable to do so.

(7) The performance of tow services that are not at the request of a department dispatcher will not affect the tow truck motor carrier's place on the call out list.

(8)(a) Each department dispatch center shall maintain a log of all of the requests for service made to certified tow truck motor carriers.

(b) The log of requests for service shall contain the following information:

(i) the date and time of the call for service;

(ii) the officer requesting service;

(iii) the reason for the request;

(iv) the description of the vehicle, including the license plate number;

(v) the location of the vehicle;
(vi) the certified tow truck motor carrier contacted;
(vii) whether the tow truck motor carrier responded to the request for service; and
(viii) the department dispatcher's initials and any remarks.

KEY: towing, motor carrier, law enforcement
January 24, 2011 41-6a-1406
Notice of Continuation August 3, 2009 53-1-106(1)(a)(I)

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-300. Concealed Firearm Permit and Instructor Rule.
R722-300-1. Purpose.

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Section 53-5-704(16) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or a LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Section 53-5-704(8) who can certify that an applicant meets the general firearm familiarity requirement under Section 53-5-704(7);

(c) " certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(10)(a)(iii)(C) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Section 53-5-704(8);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to 53-5-711;

(i) "NRA" means the National Rifle Association;

(j) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Section 921(a)(33);

(k) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(l) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32A-12-209;

(ii) Section 32A-12-220;

(iii) Section 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(m) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Section 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(n) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide.

(o) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704;

(p) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(q) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification. Revocation of a permit, instructor certification, or certificate of qualification does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(r) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(s) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit must submit a completed permit application packet to the bureau.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau which shall include the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee of $65.25, in the form of cash, check, money order, or credit card, which consists of a $35.00 fee established by Section 53-5-707 and a $30.25 FBI fingerprint processing fee;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(5)(d); and

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a).

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(5)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(i) shall not be required to pay the application fee; and

(ii) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(5)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; and

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-27-21.5(1)(n), and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsection 53-5-704(2) and (3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(2) and (3), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor must submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) a non-refundable processing fee of $50.00, in the form of cash, check, money order, or credit card;

(v) evidence that the applicant has a current NRA certification or its equivalent as required by Subsection 53-5-704(8)(a)(iii); and

(vi) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(8)(c), within one year of the date of the application.

(2) An applicant may meet the requirements of Subsection 53-5-704(8)(a)(iii) by providing a certificate of completion from one of the following:

(a) a NRA firearms instructor training program; or

(b) a POST firearms instructor training program.

(4) When reviewing an application for certification the bureau shall conduct a background investigation to ensure that the instructor is eligible to possess a firearm under Section 76-10-503 and federal law.

(5)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(8), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the address listed on the application.

(6)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(8), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification must submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau which shall include the current address of the applicant's permanent residence;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card which is $10.00 fee to renew a permit or $25.00 fee to renew an instructor certification.

(2) In addition to the items listed in Subsection (1)(b), an instructor seeking to renew an instructor certification must submit evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(8)(c), within one year of the date of the application.

(3) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(4) A fee consisting of $7.50 will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than thirty days but less than one

year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(5) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(6)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(7)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) In order to obtain a temporary permit an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. Application for a LEOJ Permit.

(1)(a) In order to obtain a LEOJ permit under Section 53-5-711, an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for a LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue a LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(15).

R722-300-9. Termination of LEOJ Status.

(1) When the bureau receives notice that a LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(2) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue a LEOJ permit.

R722-300-10. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or a LEOJ Permit.

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) A LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that a LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) a LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or a LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested,

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(15).

R722-300-11. Review Hearing Before the Board.

(1)(a) Review hearings before the board will be informal and shall be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau must establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which shall:

(a) state the board's decision and the reasons for the board's decision; and

(b) indicate that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-12. Records Access.

(1) Information provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsections 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

KEY: concealed firearm permit, concealed firearm permit instructor
January 7, 2011 53-5-701 through 53-5-711

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF

needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 0.25 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the

designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. "Total embedded costs" shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop

investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: public utilities, telecommunications, universal service fund

January 19, 2011	**54-3-1**
Notice of Continuation November 25, 2008	**54-4-1**
	54-7-25
	54-7-26
	54-8b-12
	54-8b-15

R850. School and Institutional Trust Lands, Administration.
R850-10. Expedited Rulemaking.
R850-10-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-201(3)(c), which authorize the Director and Board of the School and Institutional Trust Lands Administration to develop a procedure for expedited rulemaking.

R850-10-200. Expedited Rulemaking Procedures.

When the criteria listed below are satisfied, the agency may pursue rulemaking in an expedited manner, expediting the traditional process provided for in 63G-3.

1. Material supporting the director's proposal should be provided to the board so that there is sufficient time for review prior to the meeting, when conditions permit.
2. The proposed action will be included on the published agenda for the board meeting.
3. The agency will provide a list of individuals who have been contacted and/or involved in the drafting of the proposed rule. Those individuals shall be invited to the board meeting.
4. A written finding shall be presented to the board which shall include the information required by Subsection 53C-1-201(3)(c)(i) through (iii).
5. The presentation of the proposed rule will include the existing language, if any, with new language underlined and language to be removed indicated by brackets and strike through. A copy of the proposed rule as it would appear after adoption will also be provided.
6. The agency shall disclose at the board meeting its anticipated effective date for the rule, and proposed actions to be taken upon implementation.

KEY: rulemaking procedures, administrative procedures
April 3, 1995 53C-1-201(3)(a)(ii)
Notice of Continuation December 22, 2009

R850. School and Institutional Trust Lands, Administration.
R850-60. Cultural Resources.
R850-60-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 9-8-404, take into account the effect of trust land uses on any historic property and provide the State Historic Preservation Officer with a written evaluation of the effect of the expenditure or undertaking on the historic property. This rule also outlines the manner by which the agency shall authorize pursuant to Section 9-8-305(3)(c) surveys and excavations on trust lands.

R850-60-200. Definitions.

For purposes of this rule:

1. "Area of potential effects" means the trust lands identified by the agency within which a land use activity will take place that has the potential to cause changes in the character or use of historic properties, if any such properties exist on the surface estate of such trust lands.

2. "Discovery property" means any site or archaeological resource that is encountered, found or otherwise made known during the course of land use conducted subsequent to approval of that use by the agency.

3. "Expenditure" means use of the agency's funds for an "undertaking" as defined herein.

4. "National Register" means the National Register of Historic Places, maintained by the United States Secretary of the Interior.

5. "Undertaking" means any trust land use that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects.

R850-60-300. Authorization of Cultural Resource Work.

1. No person shall alter, remove, injure or destroy antiquities or cultural resources on trust lands, without written permission from the agency.

2. For purposes of Section 76-6-902 "consent" to alter, remove, injure or destroy antiquities or cultural resources covered by a restrictive deed covenant means either:

(a) an amendment to the certificate of sale or patent evincing the agency's release of the deed covenant; or

(b) other specific written permission and an archaeological permit issued under Section 9-8-305.

3. No person shall conduct an archaeological survey or excavate (as defined by Section 9-8-302) any cultural resources on trust lands without first obtaining a permit under Section 9-8-305 and written authorization from the agency that fulfills the requirement set forth in R850-41-500.

(a) A condition of such written authorization shall be that the principal investigator, as defined by Section 9-8-302, shall provide the agency with a copy of any records resulting from all such investigations on trust lands that are conducted under the written authorization.

(b) Non-professional documentation of the location, nature, extent and condition of cultural resources on trust lands shall also be subject to R850-60-300(3)(a).

4. A person found in violation of R850-60-300 may be subject to civil and criminal penalties under Sections 76-6-903 and 53C-2-301.

R850-60-400. Archaeological Excavation Permits.

1. Subsection 9-8-305(3)(c) allows for delegation of authority to issue excavation permits to agencies that meet specified criteria. Should the agency obtain such delegation, it shall issue excavation permits for sites on trust lands in accordance with Section 9-8-305 and Rule R694-1.

2. Applications for excavation permits shall be made on forms created and maintained by the Public Lands Policy Coordination Office and submitted to the agency in a timely manner and with enough lead time to allow for review and modification of the excavation plan or research design for the proposed investigation.

(a) The agency shall respond to an application for excavation permit in a timely manner.

(b) The agency may request information other than what is required by Section 9-8-305 and Rule R694.

3. All excavation permits shall be issued with the following requirements:

(a) The permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the agency within the time specified in the permit.

(b) Any permittee who discovers human remains shall notify the agency and other appropriate agencies pursuant to Section 76-9-704 and Rule R850-61.

(c) The agency may include other requirements as necessary.

4. Unless the proposed excavation is being conducted to facilitate execution of an expenditure or undertaking that is already the subject of Section 9-8-404 compliance, then the issuance of an excavation permit by the agency shall be considered an undertaking for purposes of Section 9-8-404.

R850-60-500. Identifying Historic Properties.

1. Following the agency's determination that a proposed trust land use constitutes an undertaking, the agency shall establish the undertaking's area of potential effects. Thereafter, the agency shall collect and review existing information about historic properties that may be located within the area of potential effects. As part of this process, the agency may seek information from the State Historic Preservation Officer (SHPO), Indian tribes, local governments, other state or federal agencies or any other interested parties likely to have knowledge or concerns about cultural resources in the area. The agency may delegate this collection of information to an appropriate person.

2. Based on this review, the agency shall make a reasonable and good faith effort to identify historic properties that might be affected by an undertaking and shall gather sufficient information to evaluate the eligibility of these properties for the National Register.

R850-60-600. Identification Responsibilities.

1. The agency may conduct cultural resource surveys on trust lands in the order of priority determined by the agency. The agency shall assign a higher priority to those cultural resource surveys for proposed uses which the agency has determined will best fulfill the trust land management objectives in R850-2-200. Agency personnel shall not normally conduct cultural resource surveys for mineral exploration or development, for easements, for surface use leases, or for projects where federal, other state or local government agencies are the applicants.

2. The director shall decide whether a cultural resource survey shall be conducted on behalf of the agency, by whom it shall be conducted, and the scope and extent to which it shall be conducted.

3. The director shall decide who will pay the cost of the cultural resource survey, when that cost shall be incurred, how much of the total cost shall be recovered, and from whom it shall be recovered. The agency may request from an applicant

or interested party payment of the cost of a cultural resource survey prior to the survey being conducted.

(a) If the party providing payment for the cultural resource survey is successful in his or her bid for the use or purchase of the trust land in question, then the agency shall not reimburse the bidder for the cost of the survey.

(b) If the party providing payment for the cultural resource survey is unsuccessful in his or her bid for the trust land in question, the agency shall reimburse that party the same amount the agency received as payment for the cultural resource survey.

R850-60-700. Evaluating Eligibility.

1. The agency shall make a determination of the eligibility for the National Register for each site identified within the undertaking's area of potential effects. The passage of time, changes in the nature of the undertaking or changing perceptions of significance may justify re-evaluation of sites that were previously determined to be eligible or ineligible for purposes of Section 9-8-404.

2. If the agency finds that either there are no historic properties present within the area of potential effects or there are historic properties present but the undertaking will have no effect on them as defined herein, the agency shall make a finding of "No Historic Properties Affected" and provide the SHPO with a written evaluation in support of that finding. If the SHPO does not reply within the time specified in Subsection 9-8-404(3)(a) or within the time period agreed to by the parties, then the agency may presume that the SHPO concurs with the agency.

3. If the agency finds that there are historic properties within the area of potential effects and the undertaking may cause changes in the character or use of historic properties, the agency shall make an assessment of effect in accordance with R850-60-800.

R850-60-800. Assessing Effects.

1. The agency shall assess the effect of a proposed trust land use or disposition on historic properties by applying the following:

(a) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(b) Examples of adverse effects. Adverse effects on historic properties include:

i) physical destruction of or damage to all or part of the property;

ii) alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation;

iii) removal of the property from its historic location;

iv) neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property; or

v) disposal of trust lands without adequate restrictions or conditions to ensure long-term preservation of the property's historic significance.

(c) Finding of no adverse effect. The agency may make a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (1)(a) of this section or the undertaking is modified or conditions are imposed to avoid adverse effects.

2. The agency shall consult the SHPO regarding the finding of effect. If the SHPO does not provide the agency with comment within the time frame set forth in Section 9-8-404, the SHPO is presumed to agree with the agency's finding of effect.

3. The director may establish treatment options in consultation with the SHPO that may include:

(a) archaeological data recovery;

(b) "alternative" or "creative" mitigation;

(c) physical treatment to alleviate or minimize the adverse effect(s);

(d) historic property documentation; or

(e) simple case documentation.

The director will make the final decision regarding any treatment options.

R850-60-900. Discoveries.

1. Upon discovering a site, a user of trust lands shall immediately cease all activities until such time as the discovery has been evaluated and treated to the director's satisfaction.

R850-60-1000. Emergency Undertakings.

The director may waive cultural resource management considerations when responding to wildland fires, flood control and other emergency actions.

R850-60-1100. Programmatic Agreements.

The agency may enter into programmatic agreements with the SHPO, or with other state or federal agencies, and with local governments for compliance with Section 9-8-404 or other pertinent state statutes. The agency may also cooperate with federal agencies in federal programmatic agreements where practicable and appropriate.

R850-60-1200. Records.

1. The agency shall submit one copy each of all site forms, survey and data recovery, treatment or mitigation reports prepared by the agency to the SHPO. All permittees preparing similar data or conducting work in accordance with R850-60-400 shall furnish two sets of the results of their work, one of which the agency will submit to the SHPO.

2. Records and data containing site location information which could jeopardize the integrity of those sites shall be provided protected records status pursuant to Subsection 63G-2-305(26).

KEY: cultural resources

January 24, 2011	**53C-1-302(1)(a)(ii)**
Notice of Continuation June 27, 2007	**53C-2-201(1)(a)**
	53C-2-301
	9-8-305
	9-8-404

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or

2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.

(1) For purposes of this rule, "item" includes:

(a) an admission;

(b) a product transferred electronically;

(c) a service; and

(d) tangible personal property.

(2)(a) An invoice or receipt issued by a seller shall separately state the sales tax collected on the invoice or receipt.

(b) If an invoice or receipt issued by a seller does not show the sales tax collected as required in Subsection (2)(a), sales tax will be assessed on the seller or purchaser based on the amount of the invoice or receipt.

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:

(a) separately states the tax exempt items on the invoice; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

(4) Unless otherwise provided by statute, if a purchase consists of two or more items that are subject to sales tax at different rates, the entire purchase is subject to sales tax at the higher tax rate unless the seller, at the time of the transaction:

(a) separately states on the invoice the items subject to sales tax at each of the different sales tax rates; or

(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items subject to sales tax at the lower tax rate.

(5) A seller that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the seller collected the excess or remit the excess to the commission.

(a) A seller may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

(b) A seller may not offset an underpayment of tax on the seller's purchases against an excess of tax collected.

R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;

2. of a change of character of the business, or

3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;

2. the person fails to file four consecutive monthly or quarterly sales tax returns, or two consecutive annual sales tax returns;

3. the person fails to renew its annual business license with the Department of Commerce; or

4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.

(1)(a) Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

(b) The return filed by a remote seller under Section 59-12-107(4) shall be the return the seller would have filed if the seller were not a remote seller.

(2) If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

(3) If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

(4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

(a) New businesses that expect annual sales and use tax liability less than $1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b)(i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than $1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c)(i) Businesses assigned an annual filing status reporting in excess of $1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of $1,000 or as a result of delinquent payment history.

R865-19S-13. Confidential Nature of Returns Pursuant to

Utah Code Ann. Section 59-12-109.

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or

2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output

procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (18).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;

2. the purchase price of the vehicle;

3. the value allowed for the trade-in vehicle;

4. the net difference between the vehicle traded and the vehicle purchased;

5. the signature of the seller; and

6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1) The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1)(a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

(b) This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and

distinct from an admission charge, or is the sole charge.

(2) "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

(3) "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

(4) If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

(5) Annual membership dues may be paid in installments during the year.

(6) Amounts paid for the following activities are not admissions or user fees:

(a) lessons, public or private;

(b) sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

(c) sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool are subject to sales tax if the lockers are tangible personal property.

R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

R865-19S-38. Isolated or Occasional Sales and Use Tax Exemption Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Isolated or occasional sales and use tax exemption" means a sale that qualifies for the sales and use tax exemption for the sale of tangible personal property by a person:

(a) regardless of the number of sales of that tangible personal property by that person; and

(b) not regularly engaged in the business of selling that type of property.

(2)(a) Except as provided in Subsection (2)(b), sales made by officers of a court, pursuant to court orders, qualify for the isolated or occasional sales and use tax exemption.

(b) Sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business do not qualify for the isolated or occasional sales and use tax exemption.

(c) Examples of sales made by officers of a court pursuant to court order, that qualify for the isolated or occasional sales and use tax exemption are sales made by sheriffs in foreclosing proceedings and sales of confiscated property.

(3) If a business regularly sells a type of property, sales of that type of property do not qualify for the isolated or occasional sales and use tax exemption, even if the primary purpose of the business is not the sale of that type of property. For example, the sale of repossessed radios or refrigerators by a finance company do not qualify for the isolated or occasional sales and use tax exemption.

(4)(a) Except as provided in Subsection (4)(b), sales of vehicles required to be titled or registered under the laws of this state do not qualify for the isolated or occasional sales and use tax exemption.

(b) The transfer of a vehicle where the ownership of the vehicle before and after the transfer is at least 80 percent the same qualifies for the isolated or occasional sales and use tax exemption.

(5) Sales that qualify for the isolated or occasional sales and use tax exemption include sales that occur as part of:

(a) the reorganization, sale, or liquidation of a business so long as those sales do not include items purchased exempt from sales tax as a sale for resale;

(b) a garage sale if:

(i) the person selling the items at the garage sale is not regularly engaged in selling that type of property; and

(ii) the items sold at the garage sale were not purchased exempt from sales tax as a sale for resale; and

(c) the sale of business assets that are:

(i) not purchased sales tax exempt by the business as a sale for resale; and

(ii) a type of property not regularly sold by the business.

(6) An example of a sale that qualifies for the sales and use tax exemption under Subsection (5)(a) is a sale, even if it is one of a series of sales, to liquidate the fixtures and equipment of a manufacturing company.

(7) Examples of sales that qualify for the sales and use tax exemption under Subsection (5)(c) include the sale by a:

(a) grocery store of its cash registers, shelves, and fixtures;

(b) law firm of its furniture; and

(c) manufacturer of its used manufacturing equipment.

(8) Sales of items at public auctions generally do not qualify for the isolated or occasional sales and use tax exemption.

R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for

example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.

(1)(a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

(b) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

(2) The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;

2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;

3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

R865-19S-51. Fabrication Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.

A. The amount charged for fabrication that is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

R865-19S-56. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

(1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

(a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

(b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building,

and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales and use tax.

R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the

patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property that is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

G. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two $6 meals, but the value of the free meal is limited to $5, the $12 is rung up and the $5 deducted, resulting in a taxable sale of $7.

R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for $8,500 and a credit of $6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or $2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed $1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

a) acquisition costs of materials and packaging, including freight;

b) direct manufacturing labor; and

c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License

No. "

R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

R865-19S-76. Painters, Polishers, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) "Service plan" includes an extended warranty agreement or other prepaid arrangement.

(2)(a) Service plan charges for a future taxable repair are subject to sales tax.

(b) Sales tax must also be collected on any deductible charged to a customer for the customer's share of the repair done under the service plan.

(3)(a) Service plan charges for items of tangible personal property that are converted to real property are not taxable.

(b) Service plan charges for items of tangible personal property that are permanently attached to real property are treated as follows:

(i) service plan charges for labor are not taxable; and

(ii) service plan charges for parts are taxable unless exempt under Title 59, Chapter 12, Part 1, Tax Collection.

(6) Rule R865-19S-58 outlines the sales tax responsibility of a person that converts tangible personal property to real property.

R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and

(E) are sold to the customer.

(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

(2) Purchases by a printer.

(a)(i) Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

(c) A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

(3) Sales by a printer.

(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:

(i) charges for printed material, even though the paper may be furnished by the customer;

(ii) charges for envelopes;

(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;

(iv) charges for pre-press materials purchased tax exempt by the printer; and

(v) charges for reprints and proofs.

(b) Charges for postage are not subject to sales and use tax.

(c) Sales by a printer are exempt from sales and use tax if:

(i) the sale qualifies for exemption under Section 59-12-104; and

(ii) the printer obtains from the purchaser a certificate as

set forth in rule R865-19S-23.

(d) If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.

(e) If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that the project is qualified for the exemption.

R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a

business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means:

(i) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a $50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the $50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a $50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National

Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(1) "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

(2) "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

(3) "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

(4) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

R865-19S-90. Telecommunications Service Pursuant to Utah Code Ann. Section 59-12-103.

(1) Taxable telecommunications service charges include subscriber access fees.

(2) Nontaxable telecommunications charges include:

(a) refundable subscriber deposits, interest, and late payment penalties;

(b) charges for interstate calls;

(c) telecommunications answering services received or relayed by a human operator;

(d) charges to repair subscriber equipment that is regarded as real property; and

(e) charges levied on subscribers to fund or subsidize special telecommunications services, including 911 service, special communications services for the deaf, and special telecommunications service for low income subscribers.

R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;

2. The person identifies himself as a purchasing agent for the government entity;

3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;

4. The transaction is approved by the government entity; and

5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.

(1) "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

(2) The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

(3) The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808.

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject

to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

R865-19S-94. Tips, Gratuities, and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.

(1) Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill that are required to be paid.

(a) Tax on the required gratuity is due from a private club, even though the club is not open to the public.

(b) Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

(2) Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

R865-19S-98. Sales and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

(a) inspected in this state; or

(b) tested for functionality in this state.

R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of payment.

R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.

State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.

A. Definitions.

1. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

2. "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

F. A user of taxable energy is liable for the municipal energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

G. A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the Tax Commission:

1. on forms provided by the Tax Commission, and

2. at the time and in the manner sales and use tax is remitted to the Tax Commission.

H. A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the Tax Commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

1. the name and address of the user of the taxable energy;

2. the volume of taxable energy delivered to the user; and

3. the entity from which the taxable energy was purchased.

I. The information required under H. shall be provided to the Tax Commission:

1. on or before the last day of the month following each calendar quarter; and

2. for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value.

R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.

A. The $75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;

2. television program; or

3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

(a) medical services;

(b) boarding services; or

(c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) Graphic design services are not subject to sales and use tax:

(a) if the graphic design is the object of the transaction; and

(b) even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

(2) Except as provided in Subsection (3), if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

(a) there is a rebuttable presumption that the tangible personal property is the object of the transaction; and

(b) the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

(3) A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

R865-19S-113. Sales Tax Obligations of Aircraft and Boat Tour Operators, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Section 59-12-103.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (2) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying

customer is picked up to the time the paying customer is dropped off at the final destination point.

(3) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.

A. "Clothing" includes:
1. aprons for use in a household or shop;
2. athletic supporters;
3. baby receiving blankets;
4. bathing suits and caps;
5. beach capes and coats;
6. belts and suspenders;
7. boots;
8. coats and jackets;
9. costumes;
10. diapers, including disposable diapers, for children and adults;
11. ear muffs;
12. footlets;
13. formal wear;
14. garters and garter belts;
15. girdles;
16. gloves and mittens for general use;
17. hats and caps;
18. hosiery;
19. insoles for shoes;
20. lab coats;
21. neckties;
22. overshoes;
23. pantyhose;
24. rainwear;
25. rubber pants;
26. sandals;
27. scarves;
28. shoes and shoe laces;
29. slippers;
30. sneakers;
31. socks and stockings;
32. steel toed shoes;
33. underwear;
34. uniforms, both athletic and non-athletic; and
35. wearing apparel.

B. "Clothing" does not include:
1. belt buckles sold separately;
2. costume masks sold separately;
3. patches and emblems sold separately;
4. sewing equipment and supplies, including:
a) knitting needles;
b) patterns;
c) pins;
d) scissors;
e) sewing machines;
f) sewing needles;
g) tape measures; and
h) thimbles; and
5. sewing materials that become part of clothing, including:
a) buttons;
b) fabric;
c) lace;
d) thread;
e) yarn; and
f) zippers.

R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Protective equipment" includes:
A. breathing masks;
B. clean room apparel and equipment;
C. ear and hearing protectors;
D. face shields;
E. hard hats;
F. helmets;
G. paint or dust respirators;
H. protective gloves;
I. safety glasses and goggles;
J. safety belts;
K. tool belts; and
L. welders gloves and masks.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:
A. ballet and tap shoes;
B. cleated or spiked athletic shoes;
C. gloves, including:
(i) baseball gloves;
(ii) bowling gloves;
(iii) boxing gloves;
(iv) hockey gloves; and
(v) golf gloves;
D. goggles;
E. hand and elbow guards;
F. life preservers and vests;
G. mouth guards;
H. roller skates and ice skates;
I. shin guards;
J. shoulder pads;
K. ski boots;
L. waders; and
M. wetsuits and fins.

R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.

A. The computation of sales and use tax must be:
1. carried to the third place; and
2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:
1. item basis; or
2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:
1. monthly; and
2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:
1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and

2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

(a) land;
(b) buildings;
(c) raw materials;
(d) supplies;
(e) film;
(f) services;
(g) transportation;
(h) gas, electricity, and other fuels;
(i) admissions or user fees; and
(j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

(a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and

(b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(2) The exemptions do not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions.

(a) "Establishment" means a unit of operations, that is generally at a single physical location in Utah, where qualifying activities are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery and equipment" means electronic or mechanical devices having an economic life of three or more years including any accessory that controls the operation of the machinery and equipment.

(c) "New or expanding establishment" means:

(i)(A) the creation of a new web search portal establishment in this state; or

(B) the expansion of an existing Utah web search portal establishment if the expanded establishment increases services or is substantially different in nature, character, or purpose from the existing Utah web search portal establishment.

(ii) The operator of a web search portal establishment who closes operations at one location in this state and reopens the same establishment at a new location does not qualify as a new or expanding establishment without demonstrating that the move meets the conditions set forth in Subsection (1)(c)(i).

(2) The exemption for certain purchases by a web search portal establishment does not apply to purchases of items of tangible personal property that become part of the real property.

(3) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(4) Machinery and equipment used for non-qualifying activities are eligible for the exemption if the machinery and equipment are primarily used in qualifying activities.

(5) The entity claiming the exemption shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

KEY: charities, tax exemptions, religious activities, sales tax

January 27, 2011	**9-2-1702**
Notice of Continuation March 13, 2007	**9-2-1703**
	10-1-303
	10-1-306
	10-1-307
	10-1-405
	19-6-808

26-32a-101 through 26-32a-113
59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-106
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353

R920. Transportation, Operations, Traffic and Safety.
R920-50. Ropeway Operation Safety.
R920-50-1. Purpose.

This rule establishes regulations, requirements, and provides standards for the design, construction, and operation of a passenger ropeway, except private residence passenger ropeways as defined in Section 72-11-102(11), and establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee (Committee). Previously the Committee was known as the Utah Passenger Tramway Safety Committee. The Committee has also been referred to as the Tramway Board.

R920-50-2. Authority.

This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway Safety Act.

R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4 and 4.3.4, means a Ropeway Inspector.

(2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4 means a Ropeway Inspector.

(3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes or cables and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4 means a Ropeway Inspector.

(7) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(8) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(9) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers in excess of one calendar year.

(10) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

(11) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

(12) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

(13) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(14) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(15) "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

(16) "Passenger" means any person riding a ropeway, other than "operating personnel."

(17) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether or not the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in ANSI B77.1 Section X.2.3.1 or ANSI B77.2 Section 2.2.1.7.2;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section 3.4.1.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;
(ii) Bullwheel;
(iii) Brake System;
(iv) Tower Structure;
(v) Sheave, Axle, or Sheave Assembly;
(vi) Carrier; and
(vii) Grip.

(18) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(19) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(20) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(21) "Qualified personnel" as used in ANSI B77.1 sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer.

(22) "Relocated ropeway" means any passenger ropeway moved to a new location.

(23) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(24) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(25) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(26) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4, means a Ropeway Inspector.

(27) "Tow specialist" as used in ANSI B77.1 section 6.3.4 means a Ropeway Inspector.

R920-50-4. General Requirements for Passenger Ropeways.

(1) Passenger ropeways operating in the State of Utah shall be registered annually with the Committee, and no passenger ropeway shall be operated for passengers without a valid certificate of registration.

(2) Ropeways require a qualified engineer to certify the design, manufacturing, and construction of the ropeway. A

Qualified Engineer or Land Surveyor is required to complete the "as-built" profile and certification.

(3) Existing ropeways, when removed and reinstalled, shall be classified as new installations.

(4) Ropeway operators shall be covered by a liability insurance of a minimum of $300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the policy.

R920-50-5. Application to Register a Passenger Ropeway.

(1) Each year prior to operating a passenger ropeway the ropeway operator shall apply to the Committee, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

(2) Term - Passenger ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

(3) Application for Certificate of Registration for existing ropeways shall include the following:

(a) Annual General Inspection Report;

(b) Annual registration fee;

(c) Approved request for exception, if applicable;

(d) Certification of Compliance; and

(e) Certificate of Insurance.

(4) Application for Certificate of Registration for new ropeways shall include the following:

(a) Annual registration fee;

(b) Approved request for exception, if applicable;

(c) Certification of Compliance;

(d) Certificate of Insurance;

(e) Certifications required in R920-50-6;

(f) Documents required in R920-50-7; and

(g) Preoperational Inspection Report.

(5) Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in such form as the Committee shall designate and in accordance with requirements of these rules. Applications shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Traffic and Safety Division
4501 South 2700 West
Salt Lake City, Utah 84119

R920-50-6. Certifications Required for Ropeways.

(1) The Certifications listed below must include the following information:

(a) Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;

(b) Designated certifying statement;

(c) A certification of design, manufacture and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and

(d) A certification of "as-built" profile must also include the name, address, seal, and Utah license of the qualified engineer or land surveyor making the certification.

(2) A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for the Ropeway.

(a) The certification shall be signed and dated by the ropeway owner or area operator.

(b) The certification shall include the following statement: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted.

(a) The Qualified Engineer in responsible charge of the design shall certify to the Committee that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operation Safety Rule.

(b) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operation Safety Rule."

(d) This statement shall be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet shall be sealed by the qualified engineer.

(e) The drawings and specifications shall include the quality assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

(4) A Certification of Manufacture for a passenger ropeway must be submitted by a Qualified Engineer of the manufacturing concern or concerns directly responsible for the supply of equipment for this ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the newly manufactured parts used in this ropeway, or ropeway modification, conform with the Utah Passenger Ropeway Safety Act, Governing Standard, the Utah Ropeway Operation Safety Rule and the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(5) A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(6) A Certification of "as-built" profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in the State of Utah.

(a) The "as-built" profile must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-7. Documents Required for Ropeways.

(1) A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Test.

(2) A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to

the Committee for review at least fourteen (14) days before acceptance testing begins. The qualified engineer determines the acceptance test requirements.

(3) The owner or area operator shall notify the Committee in writing before the acceptance test that the continuous operation requirements of ANSI B77.1 section X.1.1.11 or ANSI B77.2 section 2.1.1.11.2 have been completed.

(4) A final acceptance test report must be submitted to the Committee prior to opening the lift to the public. The qualified engineer shall approve any changes to the acceptance test procedure.

(5) "As-built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test is finished. Any variation from the design drawings shall be noted in the as-built drawings and approved by the Qualified Design Engineer.

(6) The area operator shall send a "letter of intent" to the Committee at least 45 days prior to beginning the construction of a new lift. The letter of intent must include the name of the qualified engineer, the design standard, the anticipated dates to begin and complete construction, and the available lift manufacturing data.

R920-50-8. Certificate of Registration.

(1) If the application for Certificate of Registration and supporting documentation attest that the ropeway complies with the Governing Standard and this rule, the Committee, if satisfied with the facts stated in the application, shall issue a Certificate of Registration to the operator.

(2) Identification number - For each ropeway, upon receipt of the first application for a Certificate of Registration, the Committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the Committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

R920-50-9. Governing Standards.

(1) The governing standards in Utah include "ANSI B-77.1, 2006" and "ANSI B77.2, 2004" as modified by rule of the Committee. Use of these standards is authorized by Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-11 "Applicable Provisions."

R920-50-10. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in R920-50-11 "Applicable Provisions."

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways shall comply with the new or revised requirements of the Governing Standard and with these rules at the time of the acceptance test.

(2) "Auxiliary drives." Installations shall meet the requirements for auxiliary drives, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations shall meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations shall meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations shall meet the requirements for friction type brakes, as set forth in ANSI B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Fire detection." All machine rooms that are in an enclosed structure located adjacent to the rope of the tramway (vaulted) shall have a fire detection system installed in accordance with the National Fire Alarm Code. This system shall initiate a visual and audible alarm monitored at the drive terminal operator station.

(7) "Grips, clips, and carrier testing." Testing shall be completed according to section ANSI B77.1 sections 2.3.4.3, 3.3.4.3, 4.3.4.3, and ANSI B77.2 section 2.3.4.4 except as modified by this rule.

(a) Testing personnel shall be qualified in accordance with American Society for Nondestructive Testing (ASNT) Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

(b) Testing agency inspector shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(c) Sampling size and method of obtaining the sample shall comply with the Governing Standard or the manufacturer's requirement, which ever is more stringent.

(d) Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(e) Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(f) Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(8) "Wire rope inspection." Inspections shall be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 3.4.1 and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

(9) "Operation and maintenance." All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, 7.3, and ANSI B77.2 2.3.

(10) "Audible warning devices." Requirements for audible warning devices.

(a) Installations shall meet the requirements for audible warning devices as specified by ANSI B77.1, 2.2.10, 3.2.10.

(b) ANSI B77.1 Section 4.2.10 is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

(11) "Conveyor Standards."

(a) Loading and unloading area requirements of ANSI B77.1 section 7.1.1.9 shall also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 section 7.1.2.1 may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1

section 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

(d) The belt transition entry stop device referred to in ANSI B77.1 section 7.2.3.3 shall include redundant (double) sensors. Each sensor shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

(12) "Dynamic Testing Logs." Maintenance logs shall include documentation of the dynamic testing.

(13) "Air Space Requirements." ANSI B77.1-2006, 2.1.1.3, 3.1.1.3, 4.1.1.3, 5.1.1.3, and 6.1.1.3 and ANSI B77.2 section 2.1.1.2 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway.

(14) "Portable Ropeways." Portable ropeways shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(15) "Tows Requirements."

(a) The requirements of ANSI B77.1 section 6.2.3.2.b) shall also require the stop gate to extend across the incoming and outgoing rope.

(b) Handle Tows shall have stop gates above and below the rope.

R920-50-11. Applicable Provisions.

Installations shall comply with the "Revised and Additional Provisions" of R920-50-10 in the categories listed below, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to all ropeways:

(a) New installations and relocated installations R920-50-10(1);

(b) Fire detection R920-50-10(6); effective November 1, 1995;

(c) Wire rope inspection R920-50-10(8); and

(d) Operation and maintenance R920-50-10(9).

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10); effective November 1, 2001;

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Grips, clips, and carrier testing R920-50-10(7);

(f) Audible warning devices R920-50-10(10);

(g) Dynamic testing logs R920-50-10(12); and

(h) Air space requirements R920-50-10(13); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10);

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995; and

(c) Air space requirements R920-50-10(13); effective November 1, 2006.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(13); effective November 1, 2006;

(d) Tow requirements R920-50-10(15); and

(e) Portable Ropeways R920-50-10(14).

(7) The following provisions apply to a Conveyor:

(a) Conveyor standards R920-50-10(11); and

(b) Portable Ropeways R920-50-10(14).

R920-50-12. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the governing standards and the Ropeway Operation Safety Rule, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception shall be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards shall include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the manner in which the ropeway does not conform to the governing standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in R920-50-12(7), the Committee shall issue a Certification of Registration with an exception if the operator satisfies the requirements stated in R920-50-12(4) and also supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that it's devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in R920-50-3(15) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the governing standards and this rule.

(8) The issuance of a certificate of registration with an annual exception shall not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

R920-50-13. Operation of Ropeways.

(1) Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the ropeway was open to the public at the time of the incident. The operator shall meet the requirements stated in R920-50-14.

(2) When a ropeway is modified the ropeway operator shall notify the Committee, or its appointed representative. The operator shall meet the requirements stated in R920-50-15.

R920-50-14. Incidents.

(1) Reporting of Incidents.

(a) Every passenger ropeway incident, as defined in R920-50-3(18) shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Section 63G-2-304 and are also governed by Section 63G-2-207.

(2) Suspension of Operations. When a passenger ropeway incident, as defined in R920-50-3(17) (a) or (g), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

R920-50-15. Modification of a Ropeway.

(1) The Committee, or its appointed representative shall determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; manufacture; construction, and As-Built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents shall include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form shall be submitted.

(6) The ropeway shall not resume operating until authorized by the Committee, or its appointed representative.

R920-50-16. Inspections and Testing.

(1) Inspections shall verify that the intent of the design and operational requirements imposed by the Governing Standard and this rule are met. The Committee may order other inspections in accordance with Section 72-11-211. Ropeway inspectors may inspect ropeways at any time during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule acceptance inspection and test as the procedures are received.

(3) Annual General Inspection.

All existing ropeway shall have an annual general inspection.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) The area operator shall notify the Committee, or its appointed representative of the annual general inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections shall occur as required in R920-50-14.

(5) Operational Inspection.

An Operational inspections may be made periodically during each season of use.

(a) A ropeway inspector shall make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(c) The report shall include the name and address of the inspector and the date of the inspection.

(d) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) If the inspection does not take place at the acceptance inspection and testing the area operator shall notify the Committee, or its appointed representative of the inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

R920-50-17. Ropeway Inspector and Qualified Engineer.

(1) General.

(a) Any person performing inspection services must be a "ropeway inspector" as required by this rule, and any person performing design services must be a "qualified engineer", as required by this rule.

(b) The Committee shall maintain up-to-date lists of qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

(c) Any person desiring to be approved by the Committee as a ropeway inspector or qualified engineer shall submit a written request to the Committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-17(2).

(2) Requirements.

(a) Applicant shall satisfy the Committee that by his or her education, training and experience gained by participation in ropeway inspections or designs as a principal or an assistant to a recognized ropeway inspector or ropeway designer, he or she is qualified to be, respectively, an approved inspector or designer or both.

(b) Applicant shall satisfy the Committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding and working knowledge of the governing standard and this rule.

(c) The Committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

(d) The Committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the Committee to use the services and talents of qualified private engineers wherever possible.

(3) Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

(a) practiced any fraud, misrepresentation, or deceit in applying for approval;

(b) caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

(c) been engaged in acts of unlawful or unprofessional conduct.

R920-50-18. Violations.

The Committee may address violations of this rule pursuant to Sections 72-11-212 and 72-11-213.

R920-50-19. Administrative Procedures.

Appeals from orders issued pursuant to any provision of this rule shall be governed by R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits
January 10, 2011 72-11-201 through 72-11-216
Notice of Continuation August 13, 2007

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 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.

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 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.

(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 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;

(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.

(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; or

(c) the client is participating in FEPTP.

(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, illegal alien, 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 written 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 20 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 is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training 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.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty 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 minimum number of hours of participation under this this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) 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 food stamps and the client is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp 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; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) 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 in the home and who is included in the household for assistance purposes;

(b) 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;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) 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.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) 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.

(7) 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.

(8) 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.

(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. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(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 the appropriate diversion payment amount.

(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) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month 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, educational or training 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. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(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 extension 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 extension 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 or

(i) is no longer employed due to a verified reduction in force (layoff) and needs additional time to find work. Participation in eligible activities is required for an exception under this subparagraph. This exception is only available for parents who were laid off on or after January 1, 2008. This exception will not be available after December 31, 2011.

(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) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) 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; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension 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 listed above. Both parents need not meet the same exception.

(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 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 food stamps, 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 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.

R986-200-230. 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 food stamps, 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 food stamps, 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 food stamp 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.

(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 $60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(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 WIA 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.

R986-200-247. Utah Back to Work Pilot Program (BWP).

(1) BWP is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible unemployment insurance (UI) claimant. To be eligible, a UI claimant must:

(a) be currently receiving UI benefits and have received at least one week of paid UI benefit. The waiting week is not considered a "paid" benefit for the purposes of this section;

(b) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(c) have at least 1 week of UI benefits remaining on his or her claim. The week can be Extended Benefits under 35A-4-402 or Emergency Unemployment Compensation (EUC) benefits as defined by the UI division;

(d) be the parent of at least one minor dependent child and be contributing to the financial support of that child or children;

(e) have not worked for the employer where the claimant is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the BWP program; and

(f) have not previously participated in the BWP or BWY program.

(2) The Utah Back to Work Youth Program (BWY) provides short term subsidized employment for a maximum of three months to unemployed youth 18-24 years of age. BWY youth must be legally eligible to work in the U.S. and be unemployed but do not need to be receiving or eligible to receive UI benefits. BWY youth do not need to be a parent but must meet the requirement of subsection (1)(f) and have not participated in the BWP or BWY program before.

(3) 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" under the "Hiring Incentives to Restore Employment Act" of 2010 which "means 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 $9 per hour. Commission only jobs may qualify if the employer guarantees $9 per hour or more, employees who receive gratuities plus wages may qualify if the employer reports $9 per hour or more to the UI Contributions division;

(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 claimant with at least 35 hours work per week; and

(g) does not hire the claimant for temporary or seasonal work.

(4) Once it has been verified that a claimant 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.

(5) BWP and BWY will continue for as long as funding is available.

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.

R986-200-250. Basic Education Training Provider.

(1) Basic education funds can only be provided to training providers approved by the Department.

(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.

R986-200-251. Types of Basic Education Training Providers and Approval Requirements.

(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.

(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following;

(a) a birth certificate,

(b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:

(i) any matters involving an alleged sexual offense;

(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or

(iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.

(c) a resume with tutoring-related work history or subject matter knowledge,

(d) three letters of recommendation addressing suitability as a tutor, and

(e) an approved grievance procedure for clients to use in making complaints.

(3) All other providers must submit Application "C" and;

(a) have been in business in Utah for at least one year;

(b) meet all state and local licensing requirements;

(c) have a satisfactory record with the Better Business Bureau;

(d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:

(i) balance sheet, income statement and a statement of changes in financial position;

(ii) copy of the most recent annual business audit; or

(iii) copies of each owner's most recent personal income tax return.

(e) submit a current Utah Business License showing at least one year in business, and

(f) submit an approved grievance procedure for clients to use in making complaints.

(g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration.

(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.

(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:

(a) program completion rates for all individuals enrolled;

(b) the type of certification students completing the program will obtain;

(c) the percentage rate of certification attained by program graduates; and

(d) program costs including tuition, fees and refund policy.

(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.

R986-200-252. Renewal and Revocation of Approval for Training Providers.

(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be

removed from the approved provider list.

(2) Providers must retain participant program records for three years from the date the participant completes the program.

(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;

(b) has committed fraud or violated applicable state or federal law, rule, or regulation;

(c) intentionally supplies inaccurate student or program performance information;

(d) fails to complete the review process; or

(e) has lost approval, accreditation, licensing, or certification from any of the following:

(i) Utah Division of Consumer Protection,

(ii) USOE,

(iii) Northwest Association of Accredited Schools, or

(iv) any other required approval, accrediting, licensing, or certification body.

(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.

R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.

(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.

(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-100.

KEY: family employment program
January 13, 2011 35A-3-301 et seq.
Notice of Continuation September 8, 2010

R986. Workforce Services, Employment Development.
R986-600. Workforce Investment Act.
R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the additional penalty under R986-100-118 do not apply. Although a WIA applicant must complete an application as provided in R986-100-111, not all of the information requested in that rule is necessary for WIA applicants.

R986-600-602. Workforce Investment Act (WIA).

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adult, dislocated workers, and youth.

R986-600-603. Youth Services.

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide youth services or the services may be provided under contract as determined by competitive bid.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, supportive services, and follow-up services.

(c) A bonus/incentive/stipend may be paid to provide recognition of achievement to eligible youth.

R986-600-604. Adults, Youth, and Dislocated Workers.

The Department offers three levels of service for adults, youth and dislocated workers:

(1) core services,

(2) intensive services,

(3) training services.

R986-600-605. Core Services.

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

(a) providing the following informational resources:

(i) outreach, intake, and orientation to, and information about, available services, including resource and referral services;

(ii) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training and education services.

(iv) performance measures with respect to the one-stop delivery system;

(b) assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) follow-up services will be provided for a period of not less than 12 months after active participation ends for all youth. If requested, follow-up services will also be provided for 12 months after the first day of employment to adults and dislocated workers who have been placed in unsubsidized employment and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIA, food stamps, other supportive services such as child care, medical services, and transportation.

R986-600-606. Intensive Services.

(1) Intensive services are available to adults and dislocated workers:

(a) who are unemployed, registered for services with the Department, and who desire employment; or

(b) who are employed, registered for services with the Department, meet the self-sufficiency definition, and need to improve or change their current employment status. Self-sufficiency for WIA is defined as:

(i) declared income from the customer's primary job is less than the WIA income eligibility standards as found in R986-600-617(4) for a family of eight; or

(ii) the customer is at risk of losing his or her current level of income as evidenced by;

(A) a notice of lay-off or closure,

(B) the inability to retain his or her current job due to changes such as the requirement for increased skills,

(C) technological or industry changes, or

(D) the potential future income from the customer's primary job will be less than the WIA income eligibility standards for a family of eight.

(2) Intensive services are available to youth who:

(a) require additional assistance to complete an educational program or to secure and hold employment, and

(b) meet the regional service priority level.

(3) Intensive services for adults, dislocated workers and youth consist of:

(a) an assessment as provided in R986-600-620,

(b) development of an employment plan as provided in R986-600-621.

(c) short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training,

(d) case management, counseling and career planning, and

(e) supportive services.

(4) Additional intensive services available to youth include:

(a) leadership development,

(b) mentoring,

(c) comprehensive guidance and counseling, and

(d) follow-up services.

R986-600-607. Training Services.

(1) If the client establishes appropriateness, training services are available to adults and dislocated workers:

(a) who are unable to achieve self-sufficiency through intensive services.

(2) Training services include employment related education and work site learning.

(3) Training services are available to youth who:

(a) require additional assistance to complete an educational program or to secure and hold employment, and

(b) meet the regional service priority level.

(4) Training services for youth consist of;

(a) tutoring,

(b) alternative school,

(c) occupational skills training,

(d) paid and unpaid internships, and/or

(e) summer youth employment opportunities.

R986-600-608. Eligibility Requirements, General Definition.

(1) Core services are available to all customers.

(2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult (18 and over) and dislocated workers. Eligibility requirements for intensive and training services must be determined before an adult, youth, or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department or youth contract provider will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

R986-600-609. Citizenship, Alienage and Residency Requirements.

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

R986-600-610. Selective Service Registration Requirements.

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, which includes youth services.

R986-600-611. Income Eligibility Requirements.

(1) Applicants for all youth and adult programs must meet the income eligibility requirements in this rule.

(2) Dislocated workers do not need to meet income eligibility requirements.

(3) Up to 5% of the youth clients served do not need to meet the income eligibility requirements but must have barriers as determined by the Department. A list of current, eligible barriers is available at the Department.

R986-600-612. Prioritization Factors Used for Determining Eligibility.

(1) For adults and dislocated workers, in addition to meeting the eligibility requirements found in rules R996-600-608 through R996-600-611, the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department.

(2) When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.

(3) WIA Youth Councils set regional priority levels for services for youth based on the needs of youth in specific regions or sub-region areas.

(4) Because the funding is separate and distinct for each program, the prioritization factors operate independently for each of the two affected programs (adult and youth).

(5) Veterans will receive priority over non-veterans.

R986-600-613. Categorical Income Eligibility.

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless. Categorical income eligibility does not apply to expedited food stamps.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule except as provided in rule R986-600-611(3).

R986-600-614. How to Determine Who Is Included in the Family.

Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in the residence during the previous six months, not including the current month. Family size must be verified only if the Department is using family income to determine low-income eligibility for adult or youth services.

(1) A customer can be considered a "family" of one, if the customer is:

(a) age 18 or older and has been living on his or her own for the last six months, not including the current month;

(b) emancipated by marriage or court order;

(c) an adult child, age 22 or older, living with his or her parents and applying on his or her own behalf;

(d) in the custody of the state at the time eligibility is determined, or

(e) living alone or with a family and has a verifiable disability that is a substantial barrier to employment.

(2) A 'family' is generally described as two or more persons related by blood, marriage, or decree of court, living in a single residence. A dependent child is a child the parent or guardian claimed as a dependent of the parent or guardian's tax return.

(a) Family members included in the income determination:

(i) A husband and wife and dependent children age 21 and under;

(ii) A parent or legal guardian and dependent children age 21 and under; or

(iii) A husband and wife, if there are no dependent children.

(b) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(c) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

R986-600-615. Assets.

Assets are not counted when determining eligibility for

WIA services but will be considered in determining whether the customer has a need for WIA funding.

R986-600-616. Countable Income.

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

(a) money, wages, and salaries before any deductions,

(b) net receipts from self-employment, including farming,

(c) Job Corps payments to participants,

(d) railroad retirement,

(e) strike benefits from union funds,

(f) workers' compensation benefits,

(g) veterans' payments, except disability payments,

(h) training stipends,

(i) alimony,

(j) military family allotments or other regular support from an absent family member or someone not living in the household,

(k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,

(l) any insurance, annuity, regular disability, and social security payments, other than social security disability (SSI or SSDI) or veterans disability.

(m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),

(n) dividends,

(o) interest,

(p) net rental income,

(q) net royalties, including tribal payments from casino royalties,

(r) periodic receipts from estates or trusts, and

(s) net gambling or lottery winnings.

(2) Excludable income, which is income that is not counted, is:

(a) cash payments under a Federal, state or local public assistance program, including FEP, FEPTP, GA, WTE, SSI, RRP, or Emergency Assistance,

(b) payments received from any governmental unit for adoption assistance,

(c) child support,

(d) unemployment compensation,

(e) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,

(f) SSDI, and veterans disability payments,

(g) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some work-study programs,

(h) foster care payments,

(i) tax refunds,

(j) gifts,

(k) loans,

(l) lump-sum inheritances,

(m) one-time insurance payments or compensation for injury,

(n) Earned Income Credit from the IRS,

(o) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,

(p) benefit payments to veterans under 38 U.S.C 4212, part 3,

(q) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and

(r) other amounts specifically excluded by federal statute.

R986-600-617. How to Calculate Income.

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually. If necessary, the Department can make a best estimate or year-to-date estimate based on available records.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.

(1) A dislocated worker is an individual who meets, or has met within the past 24 months, one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, including military service, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any major layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive available services other than training, intensive, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated worker eligibility. Training appropriateness and financial need must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

R986-600-619. Participation Requirements.

Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

R986-600-620. Participation in Obtaining an Assessment.

(1) When the Department or youth contract provider determines that a client has a need for intensive services, an employment counselor/case worker will be assigned to assess the needs of the client.

(2) The assessment evaluation 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.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of employment.

(5) The employment plan may require that the client:

(a) search for employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the 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) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the state Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(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 may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may 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.

R986-600-622. Requirements of an Employment Plan for Youth.

(1) The focus of services for youth is for youth aged 14 to 21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The goal of employment for youth is:

(a) placement in employment or postsecondary education;

(b) attainment of a degree or certificate; or

(c) literacy and numeracy gains for out-of-school youth who are basic skill deficient.

R986-600-623. Education and Training and Support Services as Part of an Employment Plan.

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to achieve self-sufficiency;

(b) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(c) the client is willing to complete the education or training as quickly as is reasonable;

(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; and

(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.

(3) Additional payments and/or services are allowable

under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to participate in activities authorized under this title (WIA).

R986-600-624. The Right to Appeal a Denial of Services.

If an applicant or a client who is currently receiving services is denied services the individual can request a hearing as provided in Rules R986-100-123 through R986-100-135. If the client is currently receiving services under WIA and requests a hearing within 10 days of the denial, services will continue pending the hearing as provided in Rule R986-100-134.

R986-600-651. Definitions.

(1) "State Council" means the State Council on Workforce Services.

(2) "Eligible Provider" means a occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the State Council.

(3) "Regional Council" means any of the Regional Councils on Workforce Services.

R986-600-652. Determining Eligibility for Training Providers.

(1) Training providers are automatically eligible if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) all names under which the provider operates or is known, the mailing address, physical address, telephone number, and email address (if available) of the training facility and the number of years the provider has been in business;

(b) a copy of the provider's student grievance procedure;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the provider must provide to the Department:

(i) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(ii) the name of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(iii) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity identified in subparagraph (2)(g)(ii) of this section; and

(iv) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency identified in subparagraph (2)(g)(ii) of this section, or have earned the accreditation and/or certification from the appropriate entity from subparagraph (2)(g)(ii) of this section to teach and/or practice in the field for which the students are being prepared;

(h) program costs including tuition and fees; and

(i) documentation showing the provider has registered with the Utah Division of Consumer Protection, if required by UCA Title 13 Chapter 34. Governmental agencies are exempt and do not need to provide additional documentation but all other providers which are exempt from registration with the Utah Division of Consumer Protection must also submit the following;

(i) documentation of exempt status with the Utah Division of Consumer Protection;

(ii) the self-administered Department facilities accessibility checklist; and

(iii) documentation of financial stability prepared by a Certified Public Accountant.

(j) any other information, documentation or verification requested by the Department.

(3) Applications from providers covered under subsection 2 of this section must be sent to the Department. The Department will forward the application to the Regional Council in the region in which the provider does business. The Regional Council recommendation to the State Council that the application be approved or denied. The State Council takes the final action on each application.

(4) All providers must be in business for a minimum of one year before applying to become a training provider.

(5) The Department will notify a provider in writing when a final decision has been made concerning the provider's eligibility.

(6) A list of eligible providers, including the provider's program performance, if available, and cost information will be published on the Department's Internet site.

(7) Once a provider has been approved, the Department may establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review, if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(8) Providers must retain participant program records for three years from the date the participant completes the program.

(9) A provider who is not on the Department's approved provider list is not eligible for receipt of WIA funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department;

(b) has committed fraud or violated applicable state or federal law;

(c) intentionally supplies inaccurate student or program performance information; or

(d) fails to complete the review process.

(10) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations;

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department; or

(iv) a provider removed for supplying inaccurate student or program performance information will be suspended for two years.

R986-600-653. Distance Learning Providers.

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

(a) leads to the completion of a training program;

(b) requires students to interact with instructors;

(c) requires students to take periodic tests.

R986-600-655. The Right to a Hearing and How to Request a Hearing.

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) If the Council made the decision being appealed, the hearing request must be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's eligibility will be final.

(3) If the Department made the determination to deny eligibility or to remove the provider, the written hearing request must be made to the Department and a hearing will be held in accordance with rule R986-100-124 through R986-100-132. Any appeal of the decision of the ALJ must be made to the Council. The Council's decision will be final.

R986-600-656. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.

(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.

(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

R986-600-657. Noncompliance.

(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will;

(a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;

(b) establish a corrective action plan;

(c) notify the provider of the time lines for the completion of the plan; and

(d) ensure compliance with the corrective action plan.

(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

R986-600-658. Sanctions for Noncompliance and Right to Appeal.

(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination laws or required corrective actions.

(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to;

(a) discontinue referral of participants to the provider,

(b) cancel the contract with the provider,

(c) make other changes deemed necessary to secure compliance, and/or

(d) refer the matter to another governmental entity.

(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.

KEY: Workforce Investment Act
January 26, 2011 35A-5
Notice of Continuation September 8, 2010