**R28. Administrative Services, Fleet Operations, Surplus Property.**

**R28-1. State Surplus Property Disposal.**

**R28-1-1. Purpose.**

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property.

**R28-1-2. Authority.**

Under the provisions of Title 63A, Chapter 9, Part 8, the Utah State Agency for Surplus Property (USASP) within the Division of Fleet Operations, under the Department of Administrative Services is responsible for operating both a state and a federal surplus property program. The standards and procedures governing the operation of these two programs are found in two separate State Plans of Operation, one for state surplus property and a second plan for federal surplus property, the latter being a contract between the state and federal government. The State Plans of Operation may be reviewed at the USASP.

**R28-1-3. Procedures.**

A. State-owned personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of without first submitting a properly completed form SP-1 to and receiving authorization from the USASP.

This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

B. When a department or agency of state government determines that state-owned personal property is in excess to current needs, they will make such declaration using Form SP-1. State-owned personal property shall not be processed by the USASP unless the appropriate form is executed.

C. A standard form SP-3 is required when it is determined that state-owned personal property should be abandoned and destroyed. The SP-3 is generated by the USASP after receiving a form SP-1 and reviewing the property being disposed of by the agency.

D. State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency. However, a form SP-1 must still be completed and forwarded to the USASP to account for the transfer of the equipment. In such cases, the USASP will not assess a fee to the donating agency. Similarly, the USASP is authorized to donate computer equipment received as surplus property from agencies to the Utah Correctional Industries (UCI) for refurbishment and upgrade. Subsequent to refurbishing and upgrading, UCI may sale the equipment to public schools. In such cases, the costs associated with refurbishing and upgrading the equipment shall be borne by UCI and subsequent sale to public schools shall be governed by the Department of Corrections.

E. Federal surplus property is not available for sale to the general public, on a day-to-day basis. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program. Public auctions of federal surplus property are authorized under certain circumstances and conditions. The USASP Manager shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are conducted locally, but are regulated and accomplished by a representative of the U.S. General Services Administration.

F. The USASP Manager or designee may make an exception to the written authorization requirement identified in paragraph A above. Exceptions must be for good cause and must consider:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

**R28-1-4. Related Party Transactions.**

A. The USASP has a duty to the public to ensure that State-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

B. A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

1. Has purchasing authority.
2. Has maintenance authority.
3. Has disposition or signature authority.
4. Has authority regarding the disposal price.
5. Has access to restricted information.
6. Is perceived to be a related party using other criteria which may prohibit independence.

C. Owning state agencies must list any recommended purchasers on the standard form SP-1 and specify whether they are considered to be a related party.

D. When a prospective purchaser is identified or determined to be a related party, the USASP will employ one of the following procedures:

1. The USASP may require written justification and authorization from the Department or Division Head or authorized agent. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.

2. The USASP may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.

3. The USASP may hold the property for a 30 day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the priorities listed below.

**R28-1-5. Priorities.**

A. Public agencies are given priority for the purchase of state-owned surplus property.

B. Property received by the USASP that is determined to be unique, in short supply or in high demand by public agencies

shall be held for a period of 30 days before being offered for sale to the general public.

C. For this rule, the entities listed below, in priority order, are considered to be public agencies:

1. State Agencies
2. State Universities, Colleges, and Community Colleges
3. Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies
4. Other tax supported educational entities
5. Non-profit health and educational institutions

D. State-owned personal property that is not purchased by or transferred to public agencies during the 30-day hold period may be offered for public sale.

E. The USASP Manager or designee shall make the determination as to whether property is subject to the 30-day hold period. The decision shall consider the following:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

**R28-1-6. Accounting and Reimbursement.**

A. The USASP will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property. A summary of the total yearly sales of state surplus by agency or department will be provided to the legislature following the close of each fiscal year.

B. Reimbursements to state agencies from the sale of their surplus property will be made through the Division of Finance on interagency transfers or warrant requests. The Surplus Agency is authorized to deduct operating costs from the selling price of all state surplus property. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

C. Deposits from cash sales will be made to the State Treasurer in accordance with Title 51, Chapter 7.

D. The USASP may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the Surplus Agency accumulates funds in excess of the allowable working capital reserve, they will reduce their service and handling charge to under recover operating expenses and reduce the Retained Earnings balance accordingly. The only exception is where the USASP is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the USASP must obtain the written approval of the Executive Director of the Department of Administrative Services.

**R28-1-7. Payment.**

A. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and business or personal checks. Personal checks must be guaranteed with a bank card and may not be accepted for amounts exceeding $200. Unguaranteed personal checks or 2-party checks shall not be accepted.

B. Payment received from state subdivisions shall be in the form of agency or subdivision check.

C. Payment made by public purchasers shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 60 days following the purchase and removal of the property.

D. The USASP Manager or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

**R28-1-8. Bad Debt Collection.**

A. If a check from the general public, state subdivisions, or other agencies is returned to the USASP for "insufficient funds", the USASP shall initiate formal collection procedures.

B. The USASP shall initiate the following procedures to collect a bad debt:

1. The debtor may not make any future purchases from the USASP until the debt is paid in full.
2. The USASP shall send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees.
3. The letter shall also state that if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

C. The USASP Director or designee may make exceptions to the collection provisions of this rule for good cause. A good cause exception requires a weighing of:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

**R28-1-9. Public Sales of Surplus Property.**

A. State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be applicable, as described above.

B. At the discretion of the USASP Manager, any state-owned surplus property may be sold to the general public by auction or sealed bid. Property to be auctioned may be consigned out to an auction service. If a consignment approach is considered, the USASP Manager must ensure that the auction service is contracted by and authorized as a vendor by the Division of Purchasing.

C. Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

D. The frequency of public auctions, for either State-owned or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory at the USASP, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

**KEY: state property**
**November 1, 1999** **63A-9-801**
**Notice of Continuation March 19, 1997**

**R28. Administrative Services, Fleet Operations, Surplus Property.**

**R28-2. Surplus Firearms.**

**R28-2-1. Purpose and Authority.**

This rule sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in the Utah Code, Title 63A, Chapter 9, Part 8. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

**R28-2-2. Definitions.**

"Firearms" means all state owned firearms, including any confiscated or seized firearms over which the state has disposal authority, and any firearms declared surplus by local subdivisions.

"USASP" means Utah State Agency for Surplus Property.

"handgun" means pistols and revolvers.

"hunting and sporting rifles" means long barreled shotguns and rifles manufactured for hunting or sporting purposes.

"nonlicensee" means an individual or organization not licensed by the Federal Bureau of Alcohol, Tobacco and Firearms to buy or sell firearms.

**R28-2-3. Procedures.**

A. All state owned firearms shall be disposed of under the general provisions of Rule R28-1.

1. As an exception to the purchase priority listed in Section R28-1-5, the sale of firearms directly to the general public by the USASP is prohibited.

2. Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms. All sales will be accomplished by either auction or sealed bid.

3. Handguns may not be sold to firearms dealers. Handguns not purchased by legally constituted state law enforcement agencies and all firearms not meeting Federal Firearms regulations will either be transferred to the Utah State Public Safety Crime Lab for use or be destroyed.

B. A peace officer retiring from state service and desiring to retain his service firearm, may purchase his assigned firearm at one-half of its current replacement cost.

1. Proof of intent to retire shall be sent to the USASP along with a completed standard form SP-1 and shall be signed by an authorized agent of the owning agency.

2. The replacement cost shall be determined by the most recent state purchase order or other documentation for the specified firearm(s) and a copy shall accompany the completed standard form SP-1.

C. All firearms retained by the USASP shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.

1. Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.

D. All firearms retained by the USASP shall be in good working condition.

a. Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.

**KEY: firearms**

**November 1, 1999** **63A-9-801**

**Notice of Continuation August 16, 1996**

**R28. Administrative Services, Fleet Operations, Surplus Property.**
**R28-7. Surplus Property Rate Schedule.**
**R28-7-1. Purpose and Authority.**

As allowed in Section 63A-9-807 of the Utah Code, charges and fees are assessed based on the value of the surplus property sold or donated as well as for services and handling of the property by the Utah State Agency for Surplus Property.

**R28-7-2. Definitions.**

"USASP" means Utah State Agency for Surplus Property.

**R28-7-3. Rate Schedule.**

The USASP operates by assessing services and handling charges on property sold or donated. The services and handling charges are based on the direct and indirect costs associated with acquiring, receiving, warehousing, distributing, selling, donating, or transferring the surplus property.

A. The USASP rate structure includes several individual rate schedules for different types of surplus property sales and/or services provided. The USASP rate structure is reviewed annually.

B. In addition to the direct and indirect costs identified above, other expenses that were determined to be necessary in order to sale or donate the property may also be included. Such costs would include any rehabilitation expenses or special handling expenses.

**KEY: rates**
**November 1, 1999** **63A-9-807**
**Notice of Continuation December 2, 1997**

**R58. Agriculture and Food, Animal Industry.**
**R58-17. Aquaculture and Aquatic Animal Health.**
**R58-17-1. Authority and Purpose.**

(A) This rule is promulgated under the authority of Section 4-37-101 (et seq.) Amendments, Subsection 4-2-2(j) and 4-37-503.

(B) It is the intent of this rule to establish a program for the registration and fish health monitoring of aquaculture facilities, fee-fishing facilities, public aquaculture facilities, public fishery resources, private fish ponds, institutional facilities, private stocking, short-term fishing events and displays. This rule also addresses the importation (entry) of aquatic animals (including fish, fish eggs, gametes) into the State of Utah and establishes requirements for health approval of aquatic animals and their sources. The program is based on the monitoring of facility operations and aquatic animal movements to prevent the exposure to and spread of pathogens or diseases which adversely affect both cultured and wild aquatic animal stocks.

(C) Persons engaged in any of the aquatic animal operations listed in R58-17-1(B) must comply with the rules concerning site selection and species control under Department of Agriculture and Food 4-37-201(3)and 4-37-301(3) and Department of Natural Resources rules R657-3 and R657-16.

(D) This rule is part of a statewide aquaculture disease control effort that includes procedures and policies adopted by the Fish Health Policy Board.

**R58-17-2. Definitions.**

(A) The following terms are defined for the purpose of this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, fish processing plant or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3)(a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete of any species listed in definitions under Section (3)(a).

(4) "Brokers and dealers" are individuals or companies that are in the business of buying, selling, exchanging or transferring live aquatic animals without being actively involved in the culture, rearing or growth of the animals. This includes a person or company who rears aquatic animals, but also buys and sells additional aquatic animals without rearing them pursuant to R58-17-14(D).

(5) "Certificate of Registration (COR)" means an official document which registers facilities with the Department of Agriculture and Food or which registers facilities and events with the Division of Wildlife Resources pursuant to R58-17-4. The purpose of the document is to establish the legal description of the facility, the species of aquatic animals reared and to grant the authority to engage in the described activity.

(6) "Department" means the Department of Agriculture and Food with appropriate regulatory responsibility pursuant to 58-17-4(A)(1).

(7) "Division" means the Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to R58-17-4(A)(2).

(8) "Egg only sources" refers to a separate category of salmonid fish health approval that allows for the purchase of "fish eggs only" from a facility pursuant to R58-17-15(B)(5) and (D)(1). This category makes the distinction between those pathogens that are vertically transmitted (from parent to offspring through the egg, i.e., Renibacterium salmoninarum (BKD), IHNV, IPNV, OMV, VHSV) and those horizontally transmitted (from one fish to another by contact or association, i.e., Aeromonas salmonicida, Asian tapeworm, Ceratomyxa shasta, PKX, Myxobolus cerebralis (whirling disease), and Yersinia ruckeri).

(9) "Emergency prohibited pathogen" is a pathogen that causes high morbidity and high mortality, is exotic to Utah, and requires immediate action. This type of pathogen generally cannot be treated and is controlled through avoidance, eradication, and disinfection (see R58-17-20).

(10) "Emergency Response Procedures" are procedures approved by the Fish Health Policy Board to be activated any time an emergency prohibited or prohibited pathogen is reported pursuant to R58-17-9 and R58-17-15(D)(6).

(11) "Emergency response team" means teams as approved by the Fish Health Policy Board responsible for developing and executing action plans to respond to and report findings of emergency prohibited or prohibited pathogens pursuant to R58-17-10(A)(1) and R58-17-10(B)(1).

(12) "Entry Permit" means an official document issued by the Department which grants permission to the permit holder to import aquatic animals into Utah. An entry permit is issued for a 30 day period and stipulates which species, size or age, weight and source of aquatic animals are to be imported.

(13) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for the purpose of providing fishing for a fee or for pecuniary consideration or advantage.

(14) "Fish health approved/approval" means a system of procedures and processes which allows an assessment of the disease history of a facility or population of aquatic animals and which grants a statistical assurance that neither "emergency prohibited" nor "prohibited" pathogens are present. Fish Health Approval status is granted to COR holders in Utah and to aquatic animal sources outside of Utah, all of which have satisfactorily completed health approval assessment requirements pursuant to R58-17-15, have been assigned a health approval number, and placed on the fish health approval list (R58-17-13(C)). Fish health approval is necessary before buying, selling or brokering aquatic animals within Utah or importing aquatic animals into Utah.

(15) "Fish Health Policy Board" means the board created pursuant to Amendment 4-37-503.

(16) "Fish processing plant" means a facility used for receiving whole dead, eviscerated fresh or frozen fish for processing.

(17) "Import/importation" means to bring live aquatic animals, by any means into the State of Utah from any location outside the state and to subsequently possess and use them for any purpose.

(18) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(19) "Ornamental fish" means any species of aquatic animals that are reared or marketed for their beauty or exotic characteristics, rather than for consumptive or recreational use. Tropical fish, goldfish and koi are included in the category of ornamental fish. This does not include those species of aquatic animals listed as prohibited or controlled in Department of Natural Resources rule R657-3. Ornamental fish are not regulated under rules R58-17 or R657-3. If the Department or Division determines that an introduction of ornamental fish poses a disease risk for aquatic animals, then all requirements under this rule apply.

(20)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(21) "Procedures for the Timely Reporting of Pathogens" means procedures approved by the Fish Health Policy Board for the timely reporting of emergency prohibited, prohibited, or reportable pathogens from any source in Utah or from any out-of-state health approved source pursuant to R58-17-9 and R58-17-15(D)(5).

(22) "Prohibited pathogen" is a pathogen that can cause high morbidity or high mortality, may be endemic to Utah, and requires action in a reasonable time frame. A prohibited pathogen is generally very difficult or impossible to treat and is controlled through avoidance, eradication, and disinfection (see R58-17-20).

(23)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the Division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(24) "Public fishery resource" means aquatic animals produced in public aquaculture facilities and wild and free ranging populations of aquatic animals in the surface waters of the state.

(25) "Quarantine" means the restriction of movement of live aquatic animals regardless of age and of all equipment and hauling trucks into or from an area designated by the Commissioner of Agriculture or State Veterinarian pursuant to R58-17-10 and Agricultural code 4-31-16 and 17.

(26) "Reportable pathogen" is a pathogen that generally is not a problem if good management practices are followed. It is possible to prevent or treat a reportable pathogen. Reportable pathogens are not prohibited in Utah but may be prohibited in some other states or countries. These pathogens are of concern because of their possible effect on commerce in aquatic animals (see R58-17-20).

(27) "Source" means the rearing or holding environment of an aquatic animal.

(28) "Unregulated pathogen" is a pathogen that is not regulated in Utah. Unregulated pathogens include all pathogens not classified as either emergency prohibited, prohibited, or reportable. Reporting of these pathogens to the Fish Health Policy Board is not required (see R58-17-20).

**R58-17-3. Penalties.**

Any violation of or failure to comply with any provision of this rule or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this rule or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9 and 23-13-11, as determined by the Director of the Division of Wildlife Resources.

**R58-17-4. Certificate of Registration (COR) Required.**

(A) Activities requiring a COR:

(1) A COR, issued by the Department, is required before a person may engage in the following activities within the State of Utah:

(a) Operate an aquaculture facility.

(b) Operate a fee-fishing facility.

(c) Operate a fish processing plant.

(2) A COR, issued by the Division, is required for operation of the following activities within the State of Utah:

(a) public aquaculture facilities;.

(b) private fish ponds (R657-16-10);

(c) institutional aquaculture facilities (R657-16-13);

(d) short term fishing events (R657-16-11);

(e) private stocking (R657-16-12);

(f) displays (R657-16-14).

(3) One of the above CORs must be in place prior to the issuance of an entry permit for importing live aquatic animals into Utah.

(B) No refunds may be given. Sales of CORs are final.

**R58-17-5. Species Allowed.**

(A) Pursuant to Department of Natural Resources rule R657-3, only those species approved by the Wildlife Board and listed on the COR may be used in conjunction with the activity listed on the COR.

(B) Pursuant to 4-37-105(1), 4-37-201(3)(B) and 4-37-301(3)(B) the Department shall coordinate with the Division to determine which species the holder of a COR may propagate, possess, transport or sell.

(C) The Department will insure that the species described on CORs and entry permits issued by the Department are those approved by the Division.

**R58-17-6. Qualifying Waters.**

(A) An aquaculture facility, fee-fishing facility or private fish pond may not be developed on natural lakes, natural flowing streams, or reservoirs constructed on natural stream channels. Other water, including canals, offstream reservoirs, and excavated ponds or raceways will be considered for use as an aquaculture or fee-fishing facility.

(B) During the COR application process, the Department shall coordinate with the Division to determine the suitability of the proposed site pursuant to R58-17-6(A), 4-37-111, 4-37-201(3) and 4-37-301(3).

**R58-17-7. Screens Required.**

(A) Screens or other devices that are designed to prevent the movement of fish into or out of an aquaculture facility, fee-fishing facility, public aquaculture facility, private fish pond, institutional aquaculture facility, short term fishing event or display must be placed at the inflow and outflow. The presence of adequate screening or other devices is a precondition to issuance or renewal of CORs.

(B) As part of the COR issuance process, the Department or the Division shall make site visits and determine the adequacy of screening.

(C) During and following the COR application process, the Department or Division may inspect screening or other devices in their respective areas of responsibility to assure compliance with Subsections R58-17-7(A) and (B) during reasonable hours.

(D) It is the responsibility of the COR holder to report to the Department or Division, depending on which agency issued the COR, all escapements of aquatic animals from facilities. This is to be done within 72 hours of the loss or knowledge of the loss. The report shall include facility names, date of loss, estimate of number of aquatic animals lost, names of public water the aquatic animals escaped into, remedial actions taken, and plans for future remedial action. The COR holder and/or facility operator will bear all costs for remedial actions. The Department or Division shall notify all agencies and affected parties within two working days. The agency having responsibility may suspend all activities at the facility, including aquatic animal imports, transfers, sales, fishing, etc., until the investigation and remedial actions are completed.

**R58-17-8. Application and Renewal of Certificates of Registration (CORs).**

(A) Application process.

(1) For application procedures pursuant to R58-17-4, contact the Fish Health Program of the Department at 350 N. Redwood Road, Box 146500, Salt Lake City, UT 84114-6500 or the Wildlife Registration Office of the Division at 1594 West North Temple, Suite 2110, Salt Lake City, UT 84114-6301.

(2) The application form must be completed and sent to the appropriate address with the required fee. Forms that are incomplete, incorrect or not accompanied by the required fee may be returned.

(3) Department or Division approval of the site and species will be done at the earliest possible date. The Department will make every effort to process applications submitted to it within two weeks pursuant to 4-37-201(3) and 4-37-301(3). Pursuant to R657-16-4, applications submitted under the jurisdiction of the Division require up to 45 days for processing, except for short-term fishing events, which require up to 10 days.

(4) Upon approval, a written COR and COR number will be issued. This certificate will be sent to the facility owner or operator and should be filed for 2 years pursuant to Section 4-37-110.

(5) If the application is denied, a written explanation will be sent to the applicant.

(B) Renewal process.

(1) All CORs are valid for the calendar year issued and will remain valid until January 31 of the following year unless renewed sooner.

(2) CORs are renewed annually by submitting a completed application and the required fee to the Department or Division, and by complying with all other applicable renewal criteria.

(3) Failure to renew the COR annually may result in the loss of health approval, denial of future CORs, and the removal or destruction of the live aquatic animals at the facility.

(C) CORs are not transferrable.

**R58-17-9. Reporting Fish Diseases.**

Persons involved in aquaculture and being regulated by this rule, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures developed by the Fish Health Policy Board in determining reporting and response procedures. All confirmed findings of pathogens pursuant to R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Fish Health Policy Board.

**R58-17-10. Quarantine of Aquatic Animals and Premises.**

(A) If evidence exists that the aquatic animals of any facility are infected with or have been exposed to pathogens pursuant to R58-17-15(D)(2) and (3), then a quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian. This action may be reviewed by the Fish Health Policy Board for recommendations to the Department.

(1) Lifting of the quarantine imposed on a facility infected with or exposed to emergency or prohibited pathogens requires a minimum of two negative tests, six months apart, of all lots of fish to verify the absence of the pathogen. In addition, the Department may require disinfection of the facilities and equipment in accordance with current medical knowledge of the organism, American Fisheries Society Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is still present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed.

(B) A quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian where aquatic animals are possessed, transported or transferred in violation of this rule, wildlife rules, or statute and consequently pose a possible disease threat; or where a quarantine is reasonably necessary to protect aquatic animals within the state. This action may be reviewed by the Fish Health Policy Board for recommendations to the Department.

(1) Quarantines imposed on facilities for rule or statute violations or for purposes of protecting aquatic animals may be lifted once sufficient evidence is presented to the State Veterinarian's satisfaction that infection is not present at the

facility. In addition, the Department may require disinfection of the facilities and equipment in accordance with current medical knowledge of the organism, American Fisheries Society Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed.

(C) Any person under quarantine who delivers aquatic animals from health-approved sources for other public or private aquaculture facilities may, with written permission from the Department, use their hauling trucks if the operator either houses the truck off the quarantined facility, or disinfects the truck according to Department recommendations each time it leaves the quarantined facility.

**R58-17-11. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Listed Pathogen in R58-17-15(D).**

(A) Where any facility or group of aquatic animals is confirmed to be infected with one or more of the pathogens listed in R58-17-15(D), the Commissioner of Agriculture and Food or State Veterinarian may place a quarantine and take steps to prevent the spread of the pathogen and to eliminate it from the facility. These actions may be reviewed by the Fish Health Policy Board for recommendations to the Department. The Department or Division, in their respective areas of responsibility, may take one or more of the following actions as listed below, depending on which pathogen is involved and the potential effects of the pathogen on the receiving water, neighboring aquaculture facilities or the public fishery resource.

(1) Destruction and disposal of all infected and exposed aquatic animals.

(2) Cleaning and disinfection or disposal of all handling equipment.

(3) Testing is required of all lots of fish, which may be at the owner's expense, to detect the presence or spread of the pathogen. This may include the use of sentinel fish. After two negative tests, six months apart, the quarantine shall be reassessed, possibly released, and/or other measures may be imposed. Following removal of the quarantine, full restocking can begin.

(4) The infected aquatic animals may be allowed to remain on the premises through the production cycle depending on the pathogen involved and its potential effects on adjacent animals. All stocks within the facility shall be tested every 6 months or sooner to determine if the pathogen persists in infecting the aquatic animals. At the end of the production cycle, then testing shall be done at least annually. If the pathogen is not found after two consecutive annual inspections, then testing may revert to the original requirements for the facility. If security of the facility cannot or is not being maintained, immediate destruction of the stocks may be required.

**R58-17-12. Statement of Variances.**

Circumstances may arise which cannot be adequately addressed or resolved with this rule. The Fish Health Policy Board may grant specific variances to the rule if the following conditions are met:

(A) The variance is based on scientifically sound information and rationale.

(B) The variance will cause no threat to other aquaculture operations, state or private, or to wild fish populations.

(C) The variance is documented appropriately.

**R58-17-13. Importation of Aquatic Animals or Aquaculture Products Into Utah.**

(A) An official ENTRY PERMIT is required to import live aquatic animals or their gametes into Utah from any location outside the state. This permit is in addition to the COR for operation of the facility. The entry permit can be obtained at no charge by contacting the Department, Fish Health Program and providing the following information:

(1) Name, address, phone number and COR number of importer.

(2) Species, size and/or number of aquatic animals or eggs to be imported.

(3) Name and health approval number of sources, origin of aquatic animals/eggs, transfer history, and approximate date of shipment.

(4) For international shipments, a certificate of veterinary inspection from the source must be obtained by the importer indicating that known nuisance species are not found in the water source.

(B) Each shipment of live aquatic animals/eggs must be approved individually. A copy of the entry permit will be sent to the requesting party and a copy must accompany the shipment. The permit holder shall allow one to two weeks for the Department to verify the health approval status of the source and to verify approved species status pursuant to R58-17-5.

(C) All shipments of live aquatic animals must originate from sources that have been health approved by the Department pursuant to R58-17-15(A)(2) and assigned a fish health approval number. A list of approved sources is maintained by the Department, but cannot be published due to frequent updates. Information on approved sources may only be obtained by contacting the Department Fish Health Program.

(D) All importations must be species that have been approved by the Wildlife Board and the Division pursuant to R657-3 and 4-37-105(1).

(E) To import live grass carp (Ctenopharyngodon idella), a COR and an ENTRY PERMIT are required. In addition, the fish must also be verified as being triploid (sterile) by a source acceptable to the Department. A U. S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in R657-16-7. Both this form and the Department's statement verifying treatment or testing for the Asian tapeworm must be on file with the Department prior to shipment of the fish. Copies of the entry permit, treatment and testing statement and the triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.

(F) The State Veterinarian may require treatment or testing of any aquatic animal species in accordance with current medical knowledge before importation.

(G) Whole dead and eviscerated fresh or frozen salmonid

fish may be imported into Utah for processing at a fish processing plant without an Entry Permit. Waste products, i.e., carcasses, viscera and waste water, must be incinerated, buried with quick lime, composted, digested, or disposed of by means acceptable to the Department to deter spread of pathogens by water or animals. The Department may apply the requirements in this section to other species of aquatic animals and pathogens if future needs arise.

(H) Placement of dead fish, fish parts, or fish waste products from a fish processing plant into public waters for any reason is illegal. Proper disposal is the responsibility of the processor/broker.

(I) All transport vehicles, carrying aquatic animals imported into Utah or transported through Utah pursuant to R58-17-14(C), must have proper documentation. The lack of proper documentation and/or the findings of an inspection may result in entry denial, fines, or other Department actions. All inspection costs will be born by the importer.

**R58-17-14. Buying, Selling, and Transporting Aquatic Animals.**

(A) Buying aquatic animals:

Live aquatic animals, except ornamental fish, may be purchased or acquired only by persons who have a valid COR to possess such animals. This applies to separate facilities owned by the same individual. Live aquatic animals must be purchased only from sources that either are located in-state and have a valid COR for commercial aquaculture or are located outside of Utah. In both cases, the sources must also be on the current fish health approval list.

(B) Selling aquatic animals:

Live aquatic animals, except ornamental fish, may be sold only by a person or entity located in-state who possesses a valid COR for aquaculture or by a person located outside of Utah. Current listing for each species on the fish health approval list is also required. Within Utah, an aquaculture facility operator may only sell or transfer live aquatic animals to a person or entity, which has been issued a valid COR to possess such animals.

(C) Transporting aquatic animals:

(1) Any person possessing a valid COR may transport the live aquatic animals specified on the COR to their facility or approved site.

(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish, must be accompanied by documentation of the source and destination, including:

(a) Name, address, phone number, COR number and COR expiration date, fish health approval number and expiration date of source and transfer history.

(b) Species, size, number or weight being shipped.

(c) Name, address, phone number, COR number and COR expiration date of the destination.

(d) Date of transaction.

(3) Live aquatic animals may be shipped through Utah without a COR, provided that the animals will not be sold, released or transferred, the products remain in the original container, water from the out-of-state source is not exchanged or released, and the shipment is in Utah no longer than 72 hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

(4) Any person who hauls fish may transport a species other than those listed on their COR provided the source facility and destination both have a valid COR to possess that species.

(5) No person may move or cause to be moved aquatic animals from a facility known to be exposed to or infected with any of the diseases currently on the pathogen list, R58-17-15(D)(2) through (4), without first reporting it to the appropriate regulating agency pursuant to R58-17-9 and receiving written authorization to move the aquatic animals.

(D) Brokers and Dealers:

(1) Brokers and Dealers must follow the same requirements that other producers do with respect to importation, fish health approval of their facility and their source facilities and assuring that live sales are only made to those with valid CORs.

(2) To gain fish health approval, brokers and dealers must obtain health approval for all their source facilities.

**R58-17-15. Aquatic Animal Health Approval.**

(A) Live aquatic animals, except ornamental fish, may be acquired, purchased, sold or transferred only from sources which have been granted health approval by the Department and assigned a fish health approval number. This applies to separate facilities owned by the same individual and to both in-state and out-of-state facilities.

(1) Within Utah, the Department shall be responsible for granting health approval and assigning an aquatic animal health approval number to aquaculture facilities, fee-fishing facilities and any out-of-state sources pursuant to amendment 4-37-501(1). The Division shall be responsible for granting health approval and assigning an aquatic animal health approval number to public aquaculture facilities within the state, private fish ponds within the state, and wild populations of aquatic animals in waters of the state pursuant to amendment 4-37-501(1).

(2) The Department is responsible for granting health approval for the importation into or transportation through Utah of aquatic animals.

(3) The Fish Health Policy Board may review health approval actions of the Department and/or the Division.

(B) Basis for Health Approval:

(1) Health approval for salmonid species is based on the statistical attribute sampling of fish from each lot on the facility in accordance with current American Fisheries Society Blue Book procedures. This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier incidence for the prohibited pathogens, pursuant to R58-17-15(D)(2) and (3). Health approval is applied to the entire facility, not individual lots of fish.

(2) All lots of fish shall be sampled. Approval will be withheld if a pathogen listed under R58-17-15(D)(2) or (3) is detected in any of the lots.

(3) For brood facilities, lethal sampling may be required on the brood fish if the following conditions are not met:

(a) Progeny are available at the facility for lethal sampling.

(b) A statistically valid sample of ovarian fluids from ripe females is tested.

(4) Collection, transportation and laboratory testing of the

samples will follow standard procedures specified by the Department, the Division and the Fish Health Policy Board. Inspections will be conducted under the direction of an individual who has received certification by the American Fisheries Society as a fish health inspector.

(5) EGG ONLY sources - A facility which cannot gain full fish health approval because of a horizontally transmitted pathogen, may be approved to sell eggs provided they are free of the listed vertically transmitted pathogens pursuant to R58-17-15(D)(1) and are properly disinfected using approved methods prior to shipment. Eggs may be required to be from incubation units isolated from hatchery and open water supplies and to be from fish-free water sources.

(6) Health approval for warm water species is based on disease history information obtained from the producer, fish pathologists or other fish health professionals in the producer's state or locale. Standardized inspection protocols for warm water fish diseases have not been developed. The agency having responsibility will discuss the disease history of the facility with the producer, and then may contact local fish health professionals to identify any existing or potential disease problems.

(7) Under no circumstances shall health approval be granted to a facility using emergency prohibited or prohibited pathogen contaminated water as a source.

(C) Approval Procedures:

(1) Applicable to warm and cold water aquatic animals.

(a) To receive initial fish health approval, inspection reports or other evidence of the disease status of an aquaculture facility or public aquaculture facility must be submitted to the appropriate agency. For warm water aquatic animal approval, the "Application for Warm Water Species Fish Health Approval " form must be submitted for initial approval and for renewal pursuant to R58-17-15(B)(6). Initial approval also requires the applicant to include information on origins of the aquatic animals at the facility and their transfer histories. The same application materials shall be required annually for renewal of fish health approval for activities occurring between applications.

(b) Inspections are conducted pursuant to UCA amendment 4-37-502 to detect the presence of any prohibited pathogens listed under R58-17-15(D)(2) and (3). Overt disease need not be evident to disqualify a facility. To qualify for initial and renewal of aquatic animal health approval, evidence must be available verifying that any prohibited pathogens listed under R58-17-15(D)(2) and (3) are not present.

(c) Once the requirements for initial approval or renewal of approval have been met, the facility shall be added to the fish health approval list of the responsible agency and assigned a fish health approval number for the current year. Fish health approval of each facility shall be reviewed annually for continuance on the lists maintained by the Department and the Division pursuant to R58-17-15(A)(1).

(d) The Department will report the confirmed results of annual inspections conducted at aquaculture facilities, fee fishing facilities, and out-of-state sources at each meeting of the Fish Health Policy Board.

(e) Public aquaculture facilities and wild brood stocks are included on the fish health approval list maintained by the Division. The Division will report the confirmed results of annual health inspections conducted at public aquaculture facilities, private ponds and wild populations of aquatic animals at each meeting of the Fish Health Policy Board.

(f) If all aquatic animals are removed from an approved facility for a period of three months or more, or if fish health approval is canceled or denied, then subsequent fish health approval will be granted only after the facility has completed the process for initial approval as outlined under R58-17-15(C).

(2) Applicable to cold water aquatic animals:

(a) For initial approval of new facilities, two inspections, at least six months apart and negative for any prohibited pathogen pursuant to R58-17-15(D)(2) and (3), are required. The aquatic animals must have been on the facility at least six months prior to the first inspection.

(b) For initial approval of existing facilities, health inspection reports for a minimum of the previous two years, and facility disease history reports for up to the previous five years and five-year disease histories for all stocks imported to the facility are required.

(c) All lots of aquatic animals on the facility as well as any outside sources of these aquatic animals must be inspected for initial approval and for renewals pursuant to R58-17-15(B)(4).

(d) After initial approval, annual inspections shall be required to renew fish health approval. A two-month grace period is granted at the completion of the annual inspection for laboratory testing of samples and reporting of test results. Health inspection reports, the facility disease history for at least the previous year, and disease histories for at least the previous year for all stocks imported to the facility shall be required before each renewal.

(D) Prohibited and reportable pathogen list:

(1) Pathogens requiring some form of action are classified as either emergency prohibited, prohibited, or reportable. Those pathogens denoted by an asterisk (*) preceding the name will only be tested for if the fish or eggs originate from an area where the pathogen is found. Pathogens denoted by a double asterisk (**) after the name can only be transmitted in fish and not in the eggs, therefore permitting the special provisions for egg only sources provided in Sections R58-17-2(8) and R58-17-15(B)(5).

(2) Emergency prohibited pathogens.

(a) Infectious hematopoietic necrosis virus (IHNV).

(b) Infectious pancreatic necrosis virus (IPNV).

(c) Viral hemorrhagic septicemia virus (VHSV).

(d) *Oncorhynchus masou virus (OMV).

(3) Prohibited pathogens.

(a) Myxobolus cerebralis (pathogen that causes whirling disease)**.

(b) Renibacterium salmoninarum (pathogen that causes bacterial kidney disease (BKD)).

(c) *Ceratomyxa shasta (pathogen that causes the disease ceratomyxosis)**.

(d) Bothriocephalus (Asian tapeworm and cause of the disease bothriocephalosis).**

(e) *PKX (pathogen that causes proliferative kidney disease (PKD))**.

(4) Reportable pathogens.

(a) Yersinia ruckeri (pathogen that causes enteric

redmouth)**.

(b) Aeromonas salmonicida (pathogen that causes furunculosis)**.

(c) Emerging fish pathogens (including any filterable agent or agent of clinical significance as determined by the Fish Health Policy Board).

(5) The Fish Health Policy Board Procedures for the Timely Reporting of Pathogens shall be followed if any emergency prohibited, prohibited, or reportable pathogen is found. Inspection for reportable pathogens is optional, but positive findings of these pathogens must be reported to the Fish Health Policy Board. Reporting of unregulated pathogens to the Fish Health Policy Board is not required.

(6) The Fish Health Policy Board Emergency Response Procedures shall be activated any time a confirmed finding or unconfirmed evidence of an emergency prohibited or prohibited pathogen is reported.

**R58-17-16. Inspection of Records and Facilities.**

(A) The following records must be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency representative pursuant to R58-17-4.

(1) Records of purchases, acquisition, distribution, and production histories of live aquatic animals.

(2) CORs and entry permits.

(3) Valid identification of stocks, including origin of stocks.

(B) The appropriate agency representatives may conduct pathological or physical investigations at any registered facility pursuant to R58-17-4 during reasonable hours if there is cause to believe that a disease condition exists. Any laboratory testing that is necessary as a result of this investigation will not be at the owner's expense.

**R58-17-17. Aquaculture Facilities.**

(A) COR required:

A COR is required to operate an aquaculture facility. A separate COR and fee are required for each individual facility as defined under "aquaculture facility", Section 4-37-103(2)(a), regardless of ownership.

(B) Live aquatic animals may be sold:

The operator of an aquaculture facility with aquatic animal health approval may take the aquatic animals as approved on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species.

(C) Fee-fishing facility allowed:

The operator of an aquaculture facility may also operate a fee-fishing facility under the terms applicable to fee-fishing facilities in Section R58-17-18, provided the fee-fishing facility is located at the site of the aquaculture facility, contains only those species authorized on the COR for the aquaculture facility, and this activity is listed on the COR for the aquaculture facility.

(D) Receipts required:

Any sale, shipment or transfer of live fish from an aquaculture facility must be accompanied by a receipt with documentation of the source and destination. A receipt book will be provided by the Department upon request. Copies of all receipts will be submitted to the Department and will serve as the annual report of sales. The receipt book is to be used for in-state sales or transfers, and will contain the following information:

(1) Names, addresses, phone numbers, COR numbers, COR expiration dates, fish health approval numbers and expiration dates of sources.

(2) Number and weight being shipped, by species.

(3) Names, addresses and phone numbers of destinations.

(4) COR numbers and COR expiration dates for destinations (for in-state transfers only).

(5) Dates of transactions.

(6) Signature of seller.

(E) Annual reports required:

Annual reports of all sales, transfers, and purchases must be submitted to the Department as part of the COR renewal process, pursuant to Subsection R58-17-8(B)(2). A report form for all purchases or transfers into a facility will be provided by the Department.

(1) For all purchases, this report will contain the following information:

(a) Names, addresses, phone numbers, COR numbers and fish health approval numbers of sources.

(b) Number and weight by species.

(c) Names, addresses, phone numbers, COR numbers of the destinations.

(d) Dates of transactions.

(2) For all sales or transfers, copies of the receipt book transactions pursuant to R58-17-17(D), will be submitted to the Department.

(3) The records and reports must be submitted to the Department by January 31 each year and must be received before a COR will be renewed.

(F) Fees assessed:

A COR for an aquaculture facility shall be assessed a fee of $150.00 during application and annually for renewal, pursuant to Section 4-37-301. For applicants who renew before December 31, a discount of $25.00 will be allowed. The deadline for COR renewal is January 31. If the COR renewal application is not received by February 28, the COR will be no longer valid and regulatory action shall be initiated pursuant to R58-17-8(B)(3).

**R58-17-18. Fee-Fishing Facilities.**

(A) COR required:

A COR is required to operate a fee-fishing facility. A separate COR is necessary for separate fee-fishing facilities as defined under "aquaculture facility", Section 4-37-103(2)(a), regardless of ownership.

(B) Live sales or transfers prohibited:

The operator of a fee-fishing facility may not sell, donate, or otherwise transfer live aquatic animals, except that the approved species may be transferred into the facility from an approved source.

(C) Fishing licenses not required:

A fishing license is not required to take aquatic animals from a fee-fishing facility.

(D) Receipts required:

To transport dead aquatic animals away from a fee-fishing

facility, the operator must provide a receipt to the customer which contains the following information:

(1) Name, address, COR number, COR expiration date and phone number of fee-fishing facility.

(2) Date caught.

(3) Species and number of fish.

(E) Annual report required:

The operator of a fee-fishing facility must submit to the Department an annual report of all live aquatic animals purchased or acquired during the year. A report form for all purchases or transfers into a facility will be provided by the Department. This report must contain the following information:

(1) Names, addresses, phone numbers, fish health approval numbers of all sources and/or COR numbers and COR expiration dates.

(2) Number and weight by species.

(3) Dates of sales or transfers.

(4) Names, addresses, phone numbers, COR numbers and COR expiration dates of the destinations.

(F) Fees assessed:

A fee of $30.00 shall be required with the application for the fee-fishing COR. This fee shall be required annually with the reports for COR renewal, pursuant to 4-37-301. For applicants who renew before December 31, a discount of $5.00 will be allowed. The deadline for COR renewal is January 31. If the COR renewal application is not received by February 28, the COR will be no longer valid and regulatory action shall be initiated pursuant to R58-17-8(B)(3).

**R58-17-19. Public Aquaculture, Private Fish Ponds, Institutional Aquaculture Facilities, Short Term Fishing Events, Private Stocking and Displays.**

Details on the COR and regulatory requirements pursuant to R58-17-4(2) for operating public aquaculture, private fish ponds, institutional aquaculture facilities, short term fishing events, private stocking and displays are found in the code for Natural Resources, Wildlife Resources, at Rule R657-16 of the Utah Administrative Code.

**R58-17-20. Classification of Pathogens.**

TABLE

| Classification | Criteria | Control Methods | Included Pathogens (and diseases they cause) |
|---|---|---|---|
| Emergency | High morbidity | Cannot be treated | IHNV |
| | High mortality | Avoidance, eradication and disinfection | IPNV |
| | Exotic to Utah | | VHSV |
| | Immediate action required | | OMV |
| Prohibited | Can cause high morbidity or high mortality | Very difficult or impossible to treat | Myxobolus cerebralis (whirling disease) |
| | May be endemic to Utah | Avoidance, eradication and disinfection | Renibacterium salmoninarum (BKD) |
| | Action required in reasonable time frame | | Ceratomyxa shasta PKX organism (PKD) |
| | | | Bothrio-cephalus acheilognathi (Asian tapeworm) |
| Reportable | Management diseases | Possible to prevent or treat | Yersinia ruckeri (Enteric redmouth) |
| | Not prohibited in Utah | | |
| | Prohibited in some other states or countries | | Aeromonas Salmonicida (furun-culosis) |
| | Economic importance | | Emerging fish Pathogens (including but not limited to any filterable agent or agent of clinical significance as determined by the Fish Health Policy Board) |
| | Inspection is optional | | |
| | Positive findings must be reported to the Fish Health Policy Board | | |
| Unregulated | Not regulated in Utah | | |
| | Includes all pathogens not listed above | | |
| | Reporting to the Fish Health Policy Board not required | | |

**KEY: aquaculture**
**October 2, 1999** **4-2-2**
**4-37**

**R156. Commerce, Occupational and Professional Licensing.**
**R156-1. General Rules of the Division of Occupational and Professional Licensing.**
**R156-1-101. Title.**

These rules are known as the General Rules of the Division of Occupational and Professional Licensing.

**R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

(12) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

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

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

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

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

(15) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsection 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(16) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(6).

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

(18) "Probation" means disciplinary action placing terms and conditions upon a license:

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

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

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

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

(21) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (19)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

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

(23) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (19)(a), placed on a license issued to an applicant for licensure.

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

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

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

(25) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

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

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

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

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

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

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

**R156-1-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58.

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

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

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

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

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

**R156-1-109. Presiding Officers.**

In accordance with Subsection 63-46b-2(1)(h) and Section 58-1-109, except as otherwise specified in writing by the director, the designation of presiding officers is clarified or established as follows:

(1) The division enforcement counsel is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division enforcement counsel is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

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

(3) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a request for agency action are as follows:

(a) Director. The director shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (j), (l), (m), (p), (r) and (u).

(b) Bureau managers. The bureau manager over the occupation or profession involved shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (i), (k), (q), (s), and (t).

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

(c) Contested citation hearing officer. The contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(n).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(o).

(4) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a notice of agency action shall be the division director.

**R156-1-110. Issuance of Investigative Subpoenas.**

(1) All requests for subpoenas in conjunction with a division investigation made pursuant to Subsection 58-1-106(3), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

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

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

(2) The investigative subpoena authority may quash or

modify an investigative subpoena if it is shown to be unreasonable or oppressive.

**R156-1-204. Board and Committee Meetings Open to Public - Notice of Board Meetings.**

(1) Board and committee meetings shall be open to the public except when closed in accordance with Section 52-4-5.

(2) The notice of board and committee meetings required by Section 52-4-6 shall be provided as follows:

(a) Not later than the last working day of January of each year, the division shall publish a list of its anticipated board and committee monthly meeting schedule in the State Bulletin.

(b) Not later than the last working day of each calendar month the division shall post in a prominent and appropriate place within the building occupied by the division, a calendar containing the date, time, and place of all board and committee meetings scheduled for the next succeeding month. In addition, the division shall provide a copy to the media.

(c) Not later than the close of business of the business day preceding a meeting of any board or committee, the division shall post in a prominent and appropriate place within the building occupied by the division, a copy of the agenda for the board or committee meeting.

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

(1) The director shall appoint the members of peer committees established under Title 58 or Title R156. In appointing these members, the director shall give consideration to recommendations by members of the boards.

(2) The names of all persons appointed to peer committees shall be submitted to the appropriate board for confirmation or rejection. If an appointee is rejected by the board, the director shall appoint another person to the board for confirmation or rejection.

(3) Except for ad hoc peer committees whose members shall be appointed on a case-by-case basis, the term of office of peer committee members shall be for five years; however, in making initial appointments, the terms of office of the first members appointed shall be one year, the terms of office of the second members appointed shall be two years, the terms of office of the third members appointed shall be three years, the terms of office of the fourth members appointed shall be four years, and the terms of office of the fifth members appointed shall be five years. If a peer committee does not consist of five members, the director shall establish a schedule of appointments to membership on the peer committee as consistent as possible with the schedule established in this Subsection.

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

(5) If a vacancy on a peer committee occurs, the director shall appoint a replacement to fill the unexpired term and submit the appointment to the appropriate board for confirmation or rejection. After filling the unexpired term, the replacement may be appointed for only one additional full term.

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

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

(8) Unless otherwise approved by the division, peer committee meetings shall be held in the building occupied by the division.

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

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

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

(12) Peer committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

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

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

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

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-204(3) through (13).

**R156-1-301. Cheating on Examinations.**

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the

examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

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

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

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

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

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

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

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

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

(3) Action Upon Detection of Cheating.

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

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

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

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

(e) Upon determination that an applicant has cheated on an examination, the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee who holds an active in good standing license under Title 58 may apply for inactive licensure status.

(2) The following licenses issued under Title 58 may not be placed on inactive licensure status:

(a) Agency performing animal euthanasia;

(b) Analytical laboratory;

(c) Branch pharmacy;

(d) Certified professional accountant firm;

(e) Controlled substance;

(f) Controlled substance precursor distributors and purchasers;

(g) Cosmetologist/barber school;

(h) Employee leasing company;

(i) Funeral service establishment;

(j) Hospital, institutional, nuclear, out-of-state mail service and retail pharmacy;

(k) Licensed substance abuse counselor;

(l) Pharmaceutical manufacturer, researcher, teaching organization, wholesaler or distributor;

(m) Preneed funeral arrangement provider; and

(n) Veterinary pharmaceutical outlet.

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

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

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

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

**R156-1-308a. Renewal Dates.**

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

TABLE
RENEWAL DATES

| | | | |
|---|---|---|---|
| (1) | Acupuncturist | May 31 | even years |
| (2) | Advanced Practice Registered Nurse | January 31 | even years |

| | | | |
|---|---|---|---|
| (3) | Animal Euthanasia Agency | May 31 | odd years |
| (4) | Alternate Dispute Resolution Provdr | September 30 | even years |
| (5) | Analytical Laboratory | May 31 | odd years |
| (6) | Architect | May 31 | even years |
| (7) | Audiologist | May 31 | odd years |
| (8) | Boxing Licensee | December 31 | every year |
| (9) | Branch Pharmacy | May 31 | odd years |
| (10) | Building Inspector | July 31 | odd years |
| (11) | Burglar Alarm Security | July 31 | even years |
| (12) | C.P.A. Firm | September 30 | even years |
| (13) | Certified Shorthand Reporter | May 31 | even years |
| (14) | Certified Dietitian | September 30 | even years |
| (15) | Certified Nurse Midwife | January 31 | even years |
| (16) | Certified Public Accountant | September 30 | even years |
| (17) | Certified Registered Nurse Anesthetist | January 31 | even years |
| (18) | Certified Social Worker | September 30 | even years |
| (19) | Chiropractic Physician | May 31 | even years |
| (20) | Clinical Social Worker | September 30 | even years |
| (21) | Construction Trades Instructor | July 31 | odd years |
| (22) | Contractor | July 31 | odd years |
| (23) | Controlled Substance Precursor Distributor | May 31 | odd years |
| (24) | Controlled Substance Precursor Purchaser | May 31 | odd years |
| (25) | Cosmetologist/Barber | September 30 | odd years |
| (26) | Cosmetology/Barber School | September 30 | odd years |
| (27) | Deception Detection | July 31 | even years |
| (28) | Dental Hygienist | May 31 | even years |
| (29) | Dentist | May 31 | even years |
| (30) | Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master | July 31 | even years |
| (31) | Electrologist | September 30 | odd years |
| (32) | Environmental Health Scientist | May 31 | odd years |
| (33) | Factory Built Housing Dealer | September 30 | odd years |
| (34) | Funeral Service Director | May 31 | even years |
| (35) | Funeral Service Establishment | May 31 | even years |
| (36) | Health Care Assistant | November 30 | even years |
| (37) | Health Facility Administrator | May 31 | odd years |
| (38) | Hearing Instrument Specialist | September 30 | even years |
| (39) | Hospital Pharmacy | May 31 | odd years |
| (40) | Institutional Pharmacy | May 31 | odd years |
| (41) | Landscape Architect | May 31 | even years |
| (42) | Licensed Practical Nurse | January 31 | even years |
| (43) | Licensed Substance Abuse Counselor | May 31 | odd years |
| (44) | Marriage and Family Therapist | September 30 | even years |
| (45) | Massage Apprentice, Therapist | May 31 | odd years |
| (46) | Naturopath/Naturopathic Physician | May 31 | even years |
| (47) | Nuclear Pharmacy | May 31 | odd years |
| (48) | Occupational Therapist | May 31 | odd years |
| (49) | Occupational Therapy Assistant | May 31 | odd years |
| (50) | Optometrist | September 30 | even years |
| (51) | Osteopathic Physician and Surgeon | May 31 | even years |
| (52) | Out of State Mail Order Pharmacy | May 31 | odd years |
| (53) | Pharmaceutical Administration Facility | May 31 | odd years |
| (54) | Pharmaceutical Dog Trainer | May 31 | odd years |
| (55) | Pharmaceutical Manufacturer | May 31 | odd years |
| (56) | Pharmaceutical Researcher | May 31 | odd years |
| (57) | Pharmaceutical Teaching Organization | May 31 | odd years |
| (58) | Pharmaceutical Wholesaler/Distributor | May 31 | odd years |
| (59) | Pharmacist | May 31 | odd years |
| (60) | Pharmacy Technician | May 31 | odd years |
| (61) | Physical Therapist | May 31 | odd years |
| (62) | Physician Assistant | May 31 | even years |
| (63) | Physician and Surgeon | January 31 | even years |
| (64) | Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman | July 31 | even years |
| (65) | Podiatric Physician | September 30 | even years |
| (66) | Pre Need Funeral Arrangement Provider | May 31 | even years |
| (67) | Pre Need Funeral Arrangement Sales Agent | May 31 | even years |
| (68) | Private Probation Provider | May 31 | odd years |
| (69) | Professional Counselor | September 30 | even years |
| (70) | Professional Employer Organization | September 30 | every year |
| (71) | Professional Engineer | May 31 | even years |
| (72) | Professional Land Surveyor | May 31 | even years |
| (73) | Professional Structural Engineer | May 31 | even years |
| (74) | Psychologist | September 30 | even years |
| (75) | Radiology Practical Technician | May 31 | odd years |
| (76) | Radiology Technologist | May 31 | odd years |
| (77) | Recreational Therapy Technician, Specialist, Master Specialist | May 31 | odd years |
| (78) | Registered Nurse | January 31 | odd years |
| (79) | Respiratory Care Practitioner | September 30 | even years |
| (80) | Retail Pharmacy | May 31 | odd years |
| (81) | Security Personnel | July 31 | even years |
| (83) | Social Service Worker | September 30 | even years |
| (84) | Speech-Language Pathologist | May 31 | odd years |
| (85) | Veterinarian | September 30 | even years |
| (86) | Veterinary Pharmaceutical Outlet | May 31 | odd years |

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

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

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

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

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 90 days prior to the expiration date shown on of the licensee's license.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

(4) Renewal notices shall specify a renewal application due date at least 60 days prior to the expiration date shown on the licensee's license in order to permit the renewal applications to be processed prior to the expiration of licensure in

accordance with Subsection 58-1-308(4).

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

(6) Renewal notices shall further advise each licensee that if the licensee fails to return the renewal application to the division or its designee by the renewal application due date, the licensee's license may expire before it is renewed.

(7) Renewal notices shall specify the address or addresses to where the renewal applications should be submitted.

(8) When a renewal application contains multiple parts to be returned to separate addresses, the division shall facilitate proper submission by using, to the extent resources permit, color coded renewal applications with perforated sections and return envelopes.

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

**R156-1-308d. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal During Pendency of Adjudicative Proceedings.**

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(8).

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

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

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

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

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

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

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

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

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

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

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

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

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

(a) submit documentation of prior licensure in the State of Utah;

(b) submit documentation that the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

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

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

(e) pass a law and rules examination if such an examination has been adopted for the occupation or profession to which the application pertains; and

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

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

(1) Reinstatement of restricted, suspended, or probationary

licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

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

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

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

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

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

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

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

**R156-1-308h. Relicensure Following Revocation of Licensure - Requirements.**

An applicant for relicensure following revocation of licensure shall:

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

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

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

**R156-1-308i. Relicensure Following Surrender of Licensure - Requirements.**

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

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

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

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

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

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

**R156-1-404a. Diversion Advisory Committees Created - Impaneling of Committees - Appointment of Members - Terms of Office - Vacancies in Office - Removal of Members - Quorum Requirement - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.**

(1) There is created diversion advisory committees of three members for each of the occupations or professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises.

(2) The term of office of each diversion committee member shall be for a period of three years; except that initial appointments to each diversion committee after adoption of these rules shall be staggered in that one appointment shall be one year, one appointment shall be for two years and one shall be for three years. Diversion committee members shall not be appointed to serve for more than two consecutive terms.

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

(4) If a vacancy on a diversion committee occurs, the director shall appoint a replacement to fill the unexpired term in accordance with Section 58-1-404. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) The director may remove a member for reasonable cause with the concurrence of the executive director. Reasonable cause includes failing or refusing to fulfill the responsibilities and duties of an advisory committee member, including the attendance at diversion committee meetings. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) A chairman of each diversion committee shall be designated by the director from among the three members appointed to the diversion committee. That person shall be responsible for managing the work of the diversion committee in consultation with the director.

(7) Committees meetings shall only be convened following the referral of a licensee to the diversion committee.

(8) Unless otherwise approved by the division, diversion committee meetings shall be held in the building occupied by the division.

(9) A majority of the diversion committee members shall

constitute a quorum and may act in behalf of the diversion committee.

(10) Diversion committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings, if any.

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

**R156-1-404b. Diversion Committees Duties.**

The duties of diversion committees shall include:

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

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

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

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

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

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

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

**R156-1-404d. Diversion - Procedures.**

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

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404(6) through (7).

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) The legal consequences of diversion are as described in Subsections 58-1-404(8) through (10).

(6) Reporting or release of information shall be in compliance with Subsection 58-1-404(9).

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

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

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

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

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

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

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

**R156-1-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

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

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

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the

words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership; or

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

**R156-1-503. Reporting Disciplinary Action.**

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

**KEY: diversion programs, licensing, occupational licensing**
**September 16, 1999 58-1-106(1)**
**Notice of Continuation June 2, 1997 58-1-308**

**R156. Commerce, Occupational and Professional Licensing.**
**R156-60c. Professional Counselor Licensing Act Rules.**
**R156-60c-101. Title.**

These rules are known as the "Professional Counselor Licensing Act Rules".

**R156-60c-102. Definitions.**

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

(1) "Internship" means:

(a) 600 clock hours of supervised counseling experience of which 200 hours must be in the provision of mental health therapy; or

(b) five years of supervised experience engaged in the practice of mental health therapy.

(2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or five quarter hours duration for academic credit.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

**R156-60c-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 4.

**R156-60c-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.

**R156-60c-302a. Qualifications for Licensure - Education Requirements.**

(1) The recognized accredited institution of higher education in Subsection 58-60-405(4) is one which is accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(2) The core curriculum in Subsection 58-60-405(4)(a) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making;

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory;

(d) a minimum of two semester or three quarter hours shall be in group theory;

(e) a minimum of six semester or nine quarter hours shall be in human growth and development. Examples are:

(i) physical, social and psychosocial development;
(ii) personality development;
(iii) learning theory and cognitive development;
(iv) emotional development;
(v) life-span development;
(vi) enhancing wellness;
(vii) human sexuality; and
(viii) career development;

(f) a minimum of three semester or five quarter hours shall be in cultural foundations. Examples are:

(i) human diversity;
(ii) multicultural issues and trends;
(iii) gender issues;
(iv) exceptionality;
(v) disabilities;
(vi) aging; and
(vii) discrimination;

(g) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

(i) building, maintaining and terminating relationships;
(ii) solution-focused and brief therapy;
(iii) crisis intervention;
(iv) prevention of mental illness;
(v) treatment of specific syndromes;
(vi) case conceptualization;
(vii) referral, supportive and follow-up services; and
(viii) lab not to exceed four semester or six quarter hours;

(h) a minimum of two semester or three quarter hours shall be in psychopathology and DSM classification;

(i) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

(i) addictions;
(ii) substance abuse;
(iii) cognitive dysfunction;
(iv) sexual dysfunction; and
(v) abuse and violence;

(j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;

(k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

(l) a minimum of three semester or five quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

(i) statistics;
(ii) research methods, qualitative and quantitative;
(iii) use and interpretation of research data;
(iv) evaluation of client change; and
(v) program evaluation;

(m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

(n) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(o) a minimum of 16 semester or 23 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection. These hours are required beginning January 1, 1997.

(3) The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) Professional counseling course work required in the core curriculum pursuant to Subsection 58-60-405(4)(a) may be completed after the applicant received their degree; however,

pursuant to Subsection 58-60-405(5), the experience required must be obtained after the complete education requirement has been met.

**R156-60c-302b. Qualifications for Licensure - Experience Requirements.**

(1) The professional counselor and mental health therapy training qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(5) and (6) shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy under the supervision of a qualified professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(4) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (3) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(5) and (6), and Subsections R156-60c-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

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

(1) An applicant for licensure as a professional counselor under Subsection 58-60-405(7) must pass the following examinations:

(a) the Utah Professional Counselor Law, Rules and Ethics Examination;

(b) the National Counseling Examination of the National Board for Certified Counselors; and

(c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors.

**R156-60c-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

**R156-60c-304. Continuing Education.**

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) 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.

(4) Qualified professional education under this Section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist professional counselor;

(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.

(5) Credit for 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 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified 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 three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

**R156-60c-306. License Reinstatement - Requirements.**

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental health therapy training as a professional counselor-temporary;

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors 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 professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination 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 professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

**R156-60c-401. Requirements to be Qualified as a Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.**

In accordance with Subsections 58-60-405(5) and (6), in order for an individual to be qualified as a professional counselor training supervisor or mental health therapist trainer, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(5) in the state in which the supervised training is being performed; and

(2) have engaged in lawful practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years prior to beginning supervision activities.

**R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.**

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy;

(9) supervise not more than three supervisees at any given time unless approved by the board and division; and

(10) assure each supervisee has met the educational requirement as outlined in Subsection 58-60-405(4) and R156-60c-302a prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(5).

**R156-60c-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially

vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by the provision of the American Counseling Association's Ethical Standards, March 1988, which is adopted and incorporated by reference.

**KEY: licensing, counselors, mental health, professional counselors***

**October 7, 1999** **58-60-401**
**58-1-106(1)**
**58-1-202(1)**

**R270. Crime Victim Reparations, Administration.**
**R270-3. ADA Complaint Procedure.**
**R270-3-1. Authority and Purpose.**

A. The Crime Victim Reparations Office adopts this grievance procedures rule to provide for prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

B. No qualified individual with a disability shall, by reason of such disability, be excluded from or be denied the benefits of the services, programs, or activities or be subjected to discrimination by the Office of Crime Victim Reparations.

**R270-3-2. Definitions.**

A. "ADA Coordinator" means the Support Services Coordinator of the Office of Crime Victim Reparations.

B. "Disability" means, with respect to a qualified individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

C. "Major life activities" mean functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

D. "Qualified individual with a disability" means an individual with a disability, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Office of Crime Victim Reparations.

**R270-3-3. Filing of Complaints.**

A. Any qualified individual with a disability may file a complaint within 180 days of the alleged noncompliance with the provision to Title II of the Americans with Disabilities Act of 1990 or the regulations promulgated thereunder. Complaints should be filed within 60 days to assure prompt, effective assessment and consideration of the facts and to allow time to pursue other available remedies, if necessary. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 180 days of the effective date of this rule. The filing of a complaint or of a subsequent appeal is authorization by the complainant to allow necessary parties to review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act and information otherwise protected by statute, rule, regulation, or other law.

B. The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant.

C. Each complaint shall:

1. include the complainant's name and address;

2. include the nature and extent of the individual's disability;

3. describe the office's alleged discriminatory action in sufficient detail to inform the office of the nature and date of the alleged violation;

4. describe the action and accommodation desired; and

5. be signed by the complainant or by his/her legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

E. If the complaint is not in writing, the ADA Coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

**R270-3-4. Investigation of Complaints.**

A. The ADA Coordinator shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R270-3-3(C) of this rule if it is not made available by the complainant.

B. The ADA Coordinator may seek assistance from the State of Utah Attorney General's Office, Department of Human Resource Management, and budget staff, in determining what action, if any, should be taken on the complaint. The ADA Coordinator may also consult with the Director of the Office of Crime Victim Reparations in reaching a recommendation. The ADA Coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General, before making any recommendation that would involve:

1. an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation;

2. facility modifications; or

3. reclassification or reallocation in grade.

**R270-3-5. Recommendation and Decision.**

A. Within 15 business days after receiving the complaint, the ADA Coordinator shall recommend to the Director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

B. If the ADA Coordinator is unable to make a recommendation within the 15 business day period, he/she shall notify the complainant in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

C. The Director may confer with the ADA Coordinator and the complainant and may accept or modify the recommendation to resolve the cause of the complaint. The Director shall make his/her decision within 15 business days. The Director shall take all reasonable steps to implement his/her decision. The decision shall be in writing or in another accessible format suitable to the complainant.

**R270-3-6. Appeals.**

A. The complainant may appeal the Director's decision to the Executive Director of the Commission on Criminal and Juvenile Justice within ten business days from the receipt of the

decision.

B. The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

C. The Executive Director may name a designee to assist on the appeal. The ADA Coordinator may not be the Executive Director's designee for the appeal.

D. The appeal shall describe in sufficient detail why the decision does not meet the complainant's needs without causing undue hardship to the office.

E. The Executive Director or designee shall review the ADA Coordinator's recommendation, the Director's decision, the points raised on appeal, and may direct additional investigation as necessary, prior to reaching a decision. The Executive Director shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General, before making any decision that would involve:

1. an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation;
2. facility modifications; or
3. reclassification or reallocation in grade.

F. The Executive Director shall issue his/her decision within 15 business days after receiving the appeal. It shall be in writing or in another accessible format suitable to the complainant.

G. If the Executive Director or his/her designee is unable to reach a decision within the 15 business day period, he/she shall notify the complainant in writing or by another accessible format suitable to the complainant stating why the decision is being delayed and the additional time needed to reach a decision.

**R270-3-7. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the State of Utah Antidiscrimination Complaint Procedures, the Federal ADA Complaint Procedures, or any other State of Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: ADA complaint procedures**
**1994** **34-35**
**Notice of Continuation October 5, 1999**

**R270. Crime Victim Reparations, Administration.**
**R270-4. Government Records Access and Management Act.**
**R270-4-1. Responsibility and Authority.**

A. Authority for the Office of Crime Victim Reparations rule is found in the Government Records Access and Management Act Section 63-2-101 et seq.

B. The Office of Crime Victim Reparations will be considered as an agency for the purposes of the Government Records Access and Management Act.

C. The Director of the Office of Crime Victim Reparations will be considered to be the agency head for the purposes of activities under the Government Records Access and Management Act.

D. The Office of Crime Victim Reparations maintains an office at 350 East 500 South, Suite 200, Salt Lake City, Utah 84111.

**R270-4-2. Requests for Records.**

A. Records may be requested by any person desiring access to the Office of Crime Victim Reparations records.

B. Requests should be submitted in writing to the Office of Crime Victim Reparations, Support Services Coordinator.

C. All requests should be made at the agency office listed above, in person during regular office hours or through the U.S. Mail and will be set forth with reasonable specificity:

1. the name of the record requested;
2. the date the record was made;
3. the form in which the record is needed; and
4. the name, address and daytime phone number of the requester.

**R270-4-3. Fees for Records.**

A. The Office of Crime Victim Reparations will charge fees to supply records to all requesters, except as provided in the Section R270-4-4(A) of this rule.

B. Fees for records will reflect actual costs incurred by the Office of Crime Victim Reparations and will follow any policy guidance of the Division of Finance, Department of Administrative Services.

**R270-4-4. Waiver of Fees for Records.**

A. Under the Government Records Access and Management Act Section 63-2-101 et seq. fees may be waived by the Director under any of the following circumstances:

1. when release of the record, in the opinion of the Director, benefits the public interest;
2. if the individual making the records request is the subject of a record and access is not otherwise restricted under Section 63-2-101 et seq.;
3. if the requester is an individual specified in Subsection 63-2-202(1) or 63-2-202(2); or
4. if the requester's rights are directly implicated by a record and he/she is impecunious.

B. Requests for a waiver of fees should be made in writing to the Director and will set forth the reasons why a requester desires a waiver of fees. The Director may delegate the authority to waive fees.

**R270-4-5. Classification and Release of Records and Exceptions.**

A. Records of the Office of Crime Victim Reparations will be classified and released in accordance with the Government Records Access and Management Act.

B. All records of the Office of Crime Victim Reparations which are not public as described in the Government Records Access and Management Act will be maintained according to and as authorized under the Government Records Access and Management Act.

C. Any person denied access to records of the Office of Crime Victim Reparations under the procedures outlined in the Government Records Access and Management Act has the opportunity to appeal to the Director for access to a particular record. Appeals will be in writing and include:

1. a description of the record requested;
2. an explanation of how the release of the record would serve the interest of the public and how, in the appellant's opinion, the public's interest outweighs the privacy interests of restricted access;
3. the identity of the requester and an address where he/she may be contacted.

D. The Office of Crime Victim Reparations will share its records with other agencies on a case-by-case basis in accordance with the provisions of Section 63-2-206.

**R270-4-6. Responses to Requests for Records.**

A. Responses to requests for records by the agency should be in writing and will be performed in accordance with the provisions of the Government Records Access and Management Act Section 63-2-101 et seq.

B. The Office of Crime Victim Reparations may respond to the requests for information by means of prepared forms.

**KEY: government records access**
**1994 63-2-101 et seq.**
**Notice of Continuation October 5, 1999**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-205. Underground Storage Tanks: Site Assessment Protocol.**

**R311-205-1. Definitions.**

Definitions are found in Section R311-200.

**R311-205-2. Site Assessment Protocol.**

(a) General Requirements.

(1) For all locations that have underground storage tanks regulated by 40 CFR 280, and require a site assessment pursuant to 40 CFR 280, Subparts E, F, or G, owners or operators shall perform or commission to be performed a site assessment according to the protocol outlined in Section R311-205 or equivalent, as approved by the Executive Secretary. This protocol is a minimum requirement which does not prohibit the collecting of additional samples when needed and is intended to support and supplement requirements of 40 CFR 280, Parts 280.52 and 280.72. Additional environmental samples must be collected when contamination is found, suspected, or as requested by the Executive Secretary. Samples shall be collected in a manner that will detect a release from any portion of the UST. Groundwater samples shall be collected in accordance with the "EPA RCRA Ground-water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), 1986. Surface water samples shall be collected in accordance with protocol established in the "Utah Water Quality Monitoring Manual", 1986, or in "EPA Test Methods for Evaluating Solid Waste", SW-846, Vol. 2 Field Manual, Section 9.31-9.79. Soil samples shall be collected in accordance with the "EPA Description and Sampling of Contaminated Soils, A Field Pocket Guide", 1991.

(2) Owners and operators must document and report to the Executive Secretary sample types, sample locations and depths, field and sampling measurement methods, the nature of the stored substance, the type of backfill and native soil, the depth to groundwater, and other factors appropriate for identifying the presence, the source area and the degree and extent of subsurface contamination. This documentation and reporting is required for UST closures pursuant to 40 CFR 280, Subpart G, and for any abatement, investigation or assessment, monitoring, remediation or corrective action activities performed to fulfill release response and remediation requirements of 40 CFR 280, Subparts E and F.

(3) Owners and operators must comply with site assessment protocols, documentation and reporting requirements stipulated in Sections R311-205-2(a)(1) and (2) and with the testing and site check requirements in R311-205-2(c) when applying to participate in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation in the Fund. This site assessment, documentation and reporting is required for sites re-applying for fund participation pursuant to Section 19-6-428(3)(a).

(4) The owner or operator shall report the discovery of any release or suspected release to the Executive Secretary within twenty-four hours.

(5) All environmental samples shall be collected by a certified groundwater and soil sampler who meets the requirements of Section R311-201.

(6) All environmental samples must be analyzed within the time frame allowed, in accordance with Table 4.1 of the "EPA RCRA Ground-water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), by a Utah Certified Environmental Laboratory approved by the Executive Secretary. Soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

(7) Environmental samples for UST permanent closure or change in service shall be collected according to the protocol outlined in R311-205-2(b), after the UST system is emptied and cleaned and the closure plan has been approved.

(8) Environmental confirmation samples are required following overexcavation of soils. Confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent and degree of a release from any portion of the UST in accordance with 40 CFR 280, Subparts E, F and G. Additional confirmation samples may be required as determined by the Executive Secretary.

(9) Other types of environmental or quality assurance samples may be required as determined by the Executive Secretary.

(b) Site Assessment for UST Closure.

(1) When UST testing is required, the owner or operator shall test the underground storage tanks and product piping for tightness according to standards established in 40 CFR 280, Subpart D. If the test indicates a release has occurred from the tank or product piping, then the tank or product piping shall be closed in compliance with 40 CFR 280, Subpart G, and R311-204, or repaired, or replaced. Tanks and product piping which are repaired or replaced shall be retested to demonstrate that the tanks or product piping are no longer releasing product. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release, and release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(2) Tank excavation.

(A) In-place evaluations. For facilities undergoing in-place evaluations with one tank, a minimum of two soil samples, one from each end of the tank, shall be collected in native soils, below the tank backfill material, and as close as technically feasible to each end of the tank. Any other samples required by Section R311-205-2(a)(1) must also be collected. For facilities undergoing in-place evaluations with two or more tanks adjacent to one another, a minimum of four soil samples shall be collected in native soils, below the tank backfill material, one at each corner of the tank area, and as close to the tank ends as is technically feasible. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the tank backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected at each end of the tank area. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All

environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.

(B) Closure by removal evaluations. For facilities which have excavation zones with one tank, a minimum of two soil samples, one from each end of the tank, shall be collected in native soils, below the tank backfill material, and as close as technically feasible to each end of the tank. Any other samples required by Section R311-205-2(a)(1) must also be collected. For facilities which have excavation zones with two or more tanks adjacent to one another, a minimum of four soil samples shall be collected in native soils, below the tank backfill material, one at each corner of the tank excavation, and as close to the tank ends as is technically feasible. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the tank backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected at each end of the tank excavation. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.

(3) Dispenser islands.

(A) In-place evaluations. Environmental samples shall be collected at locations as close to where the piping enters the dispenser islands as is possible. An environmental sample shall be collected at each dispenser island in a location as to never allow more than 25 linear feet of piping in a single excavation to go unsampled. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soils. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.

(B) Closure by removal evaluations. Environmental samples shall be collected at locations as close to where the piping enters the dispenser islands as is possible. An environmental sample shall be collected at each dispenser island in a location as to never allow more than 25 linear feet of piping in a single excavation to go unsampled. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soils. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.

(4) Product piping.

(A) In-place evaluations. One product piping soil sample shall be collected at each piping excavation in an area where leaking is most likely to occur such as joints, connections and fittings, and at intervals to never allow more than 50 linear feet of piping in a single excavation to go unsampled. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soil. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.

(B) Closure by removal evaluations. One product piping soil sample shall be collected at each piping excavation in an area where leaking is most likely to occur such as joints, connections and fittings, and at intervals to never allow more than 50 linear feet of piping in a single excavation to go unsampled. Any other samples as required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soils. If

groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.

(c) Testing and Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program following a Period on Non-participation or Applying for Reinstatement in the Fund Program following a Period of Lapse.

(1) Owners or operators of sites wishing to re-apply for participation in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation, must perform a tank tightness test and site check pursuant to Section 19-6-428(3)(a). The tank tightness test and site check must be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(A) The owner or operator shall test the underground storage tanks and product piping for tightness according to standards established in 40 CFR 280, Subpart D. If the test indicates a release has occurred from the tank or product piping, then the tank or product piping shall be closed in compliance with 40 CFR 280, Subpart G, and R311-204, or repaired, or replaced. Tanks and product piping which are repaired or replaced shall be retested to demonstrate that the tanks or product piping are no longer releasing product. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release, and release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(B) A site check, consistent with the site assessment standards defined in 40 CFR 280, Subpart E, must be performed.

(i) The owner shall develop or commission to have developed a site check plan outlining the intended sampling program. The Executive Secretary must review and approve the site check plan prior to its implementation. At a minimum, the site check must evaluate soils around and beneath all elements of the underground storage tank systems, including tanks, piping and dispensers, for potential evidence of contamination from petroleum releases. A sufficient number of soil samples shall be collected to be representative of soil conditions around the underground storage tank systems, and to assure, within practical limitations, that contamination is discovered, if present. In addition to soil samples, groundwater samples must be collected when groundwater is encountered during the process of soil sampling. Soil and groundwater sampling protocols, documentation and reporting requirements must conform to 40 CFR 280, Subparts E and F.

(ii) The site check must meet the provisions for minimum sampling requirements for USTs, dispensers and piping as defined for in-place closures in Sections R311-205-2(b)(2)(A), R311-205-2(b)(3)(A), and R311-205-2(b)(4)(A), respectively. Additional sampling may be required by the Executive Secretary based on review of the site check plan and site specific conditions.

(2) All technical services for tank tightness testing and site checks provided under Section R311-205-2(c) must be performed by appropriately qualified and certified individuals as defined in Section R311-201-2.

(d) Laboratory Analyses.

(1) Environmental samples which have been collected to determine levels of contamination from underground storage tanks shall be analyzed using appropriate laboratory methods as referenced in the March 31, 1999 "Table of Analytical Methods for Sampling", or as determined by the Executive Secretary.

(2) Environmental samples which have been collected to determine levels of contamination by gasoline shall be analyzed for total petroleum hydrocarbons (TPH as gasoline range organics $C_6$ - $C_{10}$),benzene, toluene, ethylbenzene, and xylenes and naphthalene (BTEXN), and for methyl tertiary butyl ether (MTBE).

(3) Environmental samples which have been collected to determine levels of contamination by diesel fuel shall be analyzed for total petroleum hydrocarbons (TPH as diesel range organics $C_{10}$ - $C_{28}$), benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN).

(4) Environmental samples which have been collected to determine levels of contamination by used oil shall be analyzed for oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH); and for benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN); methyl tertiary butyl ether (MTBE); and halogenated organic compounds.

(5) Environmental samples which have been collected to determine levels of contamination by new oil shall be analyzed for oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH).

(6) Environmental samples which have been collected to determine levels of contamination from underground storage tanks which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the Executive Secretary.

(7) All laboratory sample results must be returned to the certified groundwater and soil sampler. Environmental samples shall be collected and transported under chain of custody according to EPA methods as approved by the Executive Secretary.

(8) Reporting limits used by laboratories analyzing environmental samples taken under this rule shall be below recommended cleanup levels for the contaminated media under study. Environmental samples shall be analyzed with the least possible dilution to ensure reporting limits are below recommended cleanup levels to the extent possible. If more than one determinative analysis is performed on any given environmental sample, the final dilution factor used and the reporting limit must be reported by the laboratory. As an alternative to diluting environmental samples, the laboratory shall consider using appropriate analytical cleanup methods and

describe which analytical cleanup methods were used to eliminate or minimize matrix interference. Any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

(e) Recordkeeping.

(1) The certified groundwater and soil sampler shall record the approximate depth below grade and location of each and every sample collected to within one foot.

(2) A copy of the site plat, analytical laboratory results, chain of custody forms, and the closure notice as outlined in Section R311-204-4 shall be submitted to the Executive Secretary within 90 days after tank closure.

(3) Upon confirming a release, a site assessment report, an updated site plat, additional analytical laboratory results, chain of custody and any other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the Executive Secretary within the specified time frames as outlined in compliance schedules.

**KEY: hazardous substances, petroleum, underground storage tank***
**October 4, 1999** **19-6-205**
**Notice of Continuation March 12, 1997** **19-6-413**

**R315. Environmental Quality, Solid and Hazardous Waste.**
**R315-301. Solid Waste Authority, Definitions, and General Requirements.**
**R315-301-1. Authority and Purpose.**

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

**R315-301-2. Definitions.**

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103 and 19-6-102. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos Waste" means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 1991 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, over 20 tons of solid waste per day.

(8) "Class II landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, 20 tons, or less, of solid waste per day.

(9) "Class III landfill" means a non-commercial landfill that is to receive only industrial solid waste, but excluding farms and ranches.

(10) "Class IV landfill" means a landfill that is to receive only construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 26-32a-103.5 and Section R315-320-3, waste tires and materials derived from waste tires.

(11) "Class V landfill" means a commercial landfill which receives any nonhazardous solid waste for disposal. Class V landfill does not include a landfill that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(12) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(13) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(14) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(15) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled conditions to a state in which the end product or compost can be safely handled, stored, or applied to the land without adversely affecting human health or the environment.

(16) "Construction/demolition waste" means waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures. Such waste may include: bricks, concrete, other masonry materials, soil, asphalt, rock, untreated lumber, rebar, and tree stumps. It does not include asbestos, contaminated soils or tanks resulting from remediation or clean-up at any release or spill, waste paints, solvents, sealers, adhesives, or similar hazardous or potentially hazardous materials.

(17) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil which is a result of human activity.

(18) "Displaced or displacement" means the relative movement of any two sides of a fault measured in any direction.

(19) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off-site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(20) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(21) "Existing facility" means any facility that was receiving solid waste on or before July 15, 1993.

(22) "Expansion of a solid waste disposal facility" means any lateral or vertical expansion beyond or above the boundaries outlined in the initial permit application. Where no boundaries were designated in the disposal facility permit, expansion shall apply to all new land purchased or acquired after the effective date of these rules.

(23) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of them.

(24) "Floodplain" means the land which has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(25) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" third edition, November 1986, as revised December 1987 which is adopted and incorporated by reference.

(26) "Garbage" means discarded animal and vegetable wastes and animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(27) "Ground water" means subsurface water which is in the zone of saturation including perched ground water.

(28) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(29) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-2-3.

(30) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(31) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(32) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(33) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues which are also regulated solid wastes. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or the burning of used oil for energy recovery as described in Rule R315-15.

(34) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste. Industrial solid waste includes waste resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(17)(b).

(35) "Industrial solid waste facility" means a facility which receives only industrial solid waste from on-site or off-site sources for disposal.

(36) "Inert waste" means noncombustible, nonhazardous solid wastes that retain their physical and chemical structure under expected conditions of disposal, including resistance to biological or chemical attack.

(37) "Landfill" means a disposal facility where solid waste is placed in or on the land and which is not a landtreatment facility or surface impoundment.

(38) "Landtreatment, landfarming, or landspreading facility" means a facility or part of a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(39) "Lateral expansion of a solid waste disposal facility" means any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit or expansions not consistent with past normal operating practices.

(40) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(41) "Leachate" means a liquid that has passed through or emerged from solid waste and may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(42) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(43) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(44) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizonal acceleration depicted on a seismic hazard map, with a 90% or greater

probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(45) "Municipal landfill" means a landfill that is not for profit and is either owned and operated by a local government or a government entity such as a city, town, county, service district, or an entity created by interlocal agreement of local governments, or is solely under contract with a local government or government entity.

(46) "Municipal solid waste" means household waste, commercial solid waste, and non-hazardous sludge.

(47) "New facility" means any facility that begins receiving solid waste after July 15, 1993.

(48) "Off-site" means any site which is not on-site.

(49) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(50) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(51) "Owner" means the person, as defined by Subsection 19-1-103(4), who owns a facility or part of a facility.

(52) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(53) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of $1 \times 10^{-7}$ cm/sec or less may be considered impermeable.

(54) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act.

(55) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(56) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(57) "Putrescible" means organic material subject to decomposition by microorganisms.

(58) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(59) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returned to a waste stream or disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(60) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(61) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(62) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(63) "Scavenging" means the uncontrolled removal of solid waste from a facility.

(64) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizonal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(65) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(66) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(67) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(68) "Solid waste disposal facility" means a facility or part of a facility at which solid waste is received from on-site or off-site sources and intentionally placed into or on land and at which waste, if allowed by permit, may remain after closure. Solid waste disposal facilities include landfills, incinerators, and land treatment areas.

(69) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(70) "Special waste" means discarded materials which may require special handling or may pose a threat to public safety, human health, or the environment. Special waste may include ash, automobile bodies, furniture and appliances, infectious

waste, tires, dead animals, asbestos, industrial waste, wastes exempt from the hazardous waste classifications under the Federal Resource Conservation and Recovery Act, U.S.C., Section 6901, et seq., PCBs, and sludge.

(71) "State" means the State of Utah.

(72) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(73) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(74) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling or disposal facility.

(75) "Transport vehicle" means a vehicle capable of hauling large amounts of solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(76) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equalled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(77) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(78) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(79) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(80) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(81) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(82) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

(i) whole waste tires used as a fence;

(ii) whole waste tires used as a windbreak; and

(iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(83) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(84) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, sludge, septage, or manure.

**R315-301-3. Owner Responsibilities for Solid Waste.**

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

**R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.**

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules. This requirement does not include the deposition of inert waste used as fill material, mine tailings and overburden, agricultural waste, or the recycling of asphalt as specified in Subsection R315-301-4(2) if the deposition or disposal does not cause a public nuisance or hazard or contribute to land, air, or water pollution.

(2) Recycling of asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering

requirements.

**R315-301-5. Permit Required.**

(1) No solid waste disposal facility shall be maintained, established, or expanded until the owner or operator of such facility has obtained a permit from the Executive Secretary.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

**R315-301-6. Protection of Human Health and the Environment.**

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

**KEY: solid waste management, waste disposal**

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|---|---|
| **October 15, 1999** | **19-6-105** |
| **Notice of Continuation April 2, 1998** | **19-6-108** |
| | **19-6-109** |
| | **40 CFR 258** |

**R315. Environmental Quality, Solid and Hazardous Waste.**
**R315-306. Energy Recovery and Incinerator Standards.**
**R315-306-1. Applicability.**

(1) These standards apply to any energy recovery and incinerator facility as specified in Subsections R315-306-2(1) and R315-306-3(1).

(2) These standards do not apply to:

(a) an incineration facility which is required to obtain a state or federal hazardous waste plan approval;

(b) a facility burning only untreated woodwaste;

(c) the flaring of gases recovered at a landfill; or

(d) a facility that incinerates or cremates exclusively human or animal remains.

**R315-306-2. Requirements for Energy Recovery Facilities and Incinerators.**

(1) These standards apply to any energy recovery and incinerator facility designed to incinerate more than ten tons of solid waste per day.

(2) An energy recovery and incinerator facility shall be subject to the location standards of Section R315-302-1 with the exception of the following Subsections: R315-302-1(2)(a)(iv) and (v), R315-302-1(2)(e), and R315-302-1(3).

(3) Each owner or operator of an energy recovery facility or incinerator facility shall comply with Section R315-302-2. The submitted plan of operation shall also address alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage facility.

(4) The submitted plan of operation shall also contain a written waste identification plan which shall include identification of the specific waste streams to be handled by the facility, generator waste analysis requirements and procedures, waste verification procedures at the facility, generator certification of wastes shipped as being non-hazardous, and record keeping procedures, including a detailed operating record.

(5) Each energy recovery or incinerator facility shall be surrounded by a fence, trees, shrubbery, or natural features so as to control access and be screened from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building. Each site shall also have an adequate buffer zone of at least 50 feet from the operating area to the nearest property line in areas zoned residential to minimize noise and dust nuisances.

(6) Solid waste shall be stored temporarily in storage compartments, containers or areas specifically designed to store wastes. Storage of wastes other than in specifically designed compartments, containers or areas is prohibited. Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as may be required to maintain the plant in a sanitary and clean condition.

(7) A composite sample of the ash and residues from each energy recovery or incinerator facility shall be taken according to a sampling plan approved by the Executive Secretary.

(a) The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 1991 ed., Toxic Characteristics Leaching Procedure (TCLP) to determine if it is hazardous.

(b) If the ash and residues are found to be nonhazardous, they shall be disposed at a permitted landfill or recycled.

(c) If the ash and residues are found to be hazardous, they shall be disposed in a permitted hazardous waste disposal site.

(8) Each energy recovery facility or incinerator must be located, designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(9) An energy recovery facility or incinerator must collect and treat all run-off from the active areas of the site that may result from a 25-year storm event, and divert all run-on for the maximum flow of a 25-year storm around the site.

(10) All-weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion hazards, dust, and noise pollution.

(11) Access to the energy recovery or incinerator site shall be controlled by means of a complete perimeter fence or other features and gates which shall be locked when an attendant is not at the gate to prevent unauthorized entry of persons or livestock to the facility.

(12) The plan of operation shall include a training program for new employees and annual review training for all employees to ensure safe handling of waste and proper operation of the equipment.

(13) Each owner or operator shall post signs at the facility which indicate the name, hours of operation, necessary safety precautions, types of wastes that are prohibited, and any other pertinent information.

(14) Each owner or operator of an energy recovery or incinerator facility shall be required to provide recycling facilities in a manner equivalent to those specified for landfills in Subsection R315-303-4(6).

(15) Each owner or operator of an energy recovery or incinerator facility shall implement a plan that will inspect loads or take other steps, as approved by the Executive Secretary, to prevent the disposal of regulated hazardous waste or regulated waste containing PCB's in a manner equivalent to those specified for landfills in Subsection R315-303-4(7).

(16) Each owner or operator shall close its energy recovery facility or incinerator by removing all ash, solid waste and other residues to a permitted facility.

**R315-306-3. Requirements for Small Incinerators.**

(1) Applicability.

(a) These requirements apply to any incinerator designed to incinerate ten tons, or less, of solid waste per day and incinerator facilities that incinerate solid waste only from on-site sources.

(b) If an incinerator processes 250 pounds, or less, of solid waste per week, the requirements of Section R315-306-3 do not apply and a permit from the Executive Secretary is not required but the facility may be regulated by other local, state, or federal requirements.

(2) Requirements.

(a) Each owner and operator of an incinerator facility shall comply with Section R315-302-2.

(b) Solid waste shall be stored temporarily only in storage compartments, containers, or areas specifically designed to store wastes. Equipment and space shall be provided in the storage

and charging areas, and elsewhere as needed, to allow periodic cleaning as necessary to maintain the plant in a sanitary and clean condition.

(c) Incinerator ash and residues from any incinerator shall be sampled, analyzed, and disposed as specified in Subsection R315-306-2(7).

(d) The owner or operator of the incinerator shall prevent the disposal of regulated hazardous waste or regulated waste containing PCB's as specified in Subsection R315-306-2(15).

(e) The incinerator must be designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(f) The plan of operation shall include a training program for new employees and annual review training for all applicable employees to ensure safe handling of waste and proper operation of the equipment.

**KEY: solid waste management, waste disposal**

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|---|---|
| **October 15, 1999** | **19-6-104** |
| **Notice of Continuation April 2, 1998** | **19-6-105** |
| | **19-6-108** |

**R315. Environmental Quality, Solid and Hazardous Waste.**
**R315-308. Ground Water Monitoring Requirements.**
**R315-308-1. Applicability.**

(1) Each existing landfill, pile, or landtreatment disposal facility that is required to perform ground water monitoring shall comply with the ground water monitoring requirements according to the compliance schedule as established by the Executive Secretary during the permitting or the permit renewal process.

(2) Each new landfill, pile, or landtreatment disposal facility that is required to perform ground water monitoring shall have the ground water monitoring system complete and operational before waste may be accepted at the facility.

(3) Ground water monitoring requirements may be waived by the Executive Secretary if the owner or operator of a solid waste disposal facility can demonstrate that there is no potential for migration of hazardous constituents from the facility to the ground water during the active life of the facility and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary, and must be based upon:

(a) site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(4) Once a ground water monitoring system and program has been established at a disposal facility, ground water monitoring shall continue to be conducted throughout the active life, closure, and post-closure care periods as specified by the Executive Secretary.

**R315-308-2. Ground Water Monitoring Requirements.**

(1) The ground water monitoring system must consist of at least one background or upgradient well and two downgradient wells, installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer and all hydraulically connected aquifers below the facility, cell, or unit. The downgradient wells shall be designated as the point of compliance and must be installed at the closest practicable distance hydraulically down gradient from the unit boundary not to exceed 150 meters (500 feet) and must also be on the property of the owner or operator:

(a) the upgradient well must represent the quality of background water that has not been affected by leakage from the active area; and

(b) the downgradient wells must represent the quality of ground water passing the point of compliance. Additional wells may be required by the Executive Secretary in complicated hydrogeological settings or to define the extent of contamination detected.

(2) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata. All monitoring wells and all other devices and equipment used in the monitoring program must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(3) The ground water monitoring program must include at a minimum, procedures and techniques for:

(a) well construction and completion;

(b) decontamination of drilling and sampling equipment;

(c) sample collection;

(d) sample preservation and shipment;

(e) analytical procedures and quality assurance;

(f) chain of custody control; and

(g) procedures to ensure employee health and safety during well installation and monitoring.

(4) Each facility shall have a state certified laboratory complete tests, using methods with appropriate detection levels, as specified in the approved ground water monitoring plan, on samples for the following:

(a) during the first year of facility operation after wells are installed or an alternative schedule as approved by the Executive Secretary, a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well for all parameters listed in Section R315-308-4 to establish background concentrations;

(b) after background levels have been established, a minimum of one sample, semiannually, from each well, background and downgradient, for all parameters listed in Section R315-308-4 as a detection monitoring program;

(i) In the detection monitoring program, the owner or operator must determine ground water quality at each monitoring well on a semiannual basis during the life of an active area, including the closure period, and the post-closure care period.

(ii) The owner or operator must express the ground water quality at each monitoring well in a form appropriate for the determination of statistically significant changes;

(c) field measured pH, water temperature, and water conductivity must accompany each sample collected;

(d) analysis for the heavy metals and the organic constituents from Section R315-308-4 shall be completed on unfiltered samples; and

(e) the Executive Secretary may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(f) The following information shall be placed in the facility's operating record and a copy submitted to the Executive Secretary as the ground water monitoring results to be included in the annual report required by Subsection R315-302-2(4)(e):

(i) a report on the procedures, including the quality control/quality assurance, followed during the collection of the

ground water samples;

(ii) the results of the field measured parameters required by Subsections R315-308-2(4)(c) and R315-308-2(6);

(iii) a report of the chain of custody and quality control/quality assurance procedures of the laboratory;

(iv) the results of the laboratory analysis of the constituents specified in Section R315-308-4 or an alternative list of constituents approved by the Executive Secretary:

(A) the results of the laboratory analysis shall list the constituents by name and CAS number; and

(B) a list of the detection limits and the test methods used; and

(v) the statistical analysis of the results of the ground water monitoring as required by Subsection R315-308-2(7).

(vi) The results of the ground water monitoring may be submitted in electronic format.

(5) After background constituent levels have been established, a ground water quality protection standard shall be set by the Executive Secretary which shall become part of the ground water monitoring plan. The ground water quality protection standard will be set as follows.

(a) For constituents with background levels below the standards listed in Section R315-308-4, the ground water quality standards of Section R315-308-4 shall be the ground water quality protection standard.

(b) If a constituent is detected and a background level is established but the ground water quality standard for the constituent is not included in Section R315-308-4 or the constituent has a background level that is higher than the value listed in Section R315-308-4 for that constituent, the ground water quality protection standard for that constituent shall be set according to health risk standards.

(6) The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

(7) The owner or operator shall use a statistical method for determining whether a significant change has occurred as compared to background. The Executive Secretary will approve such a method as part of the ground water monitoring plan. Possible statistical methods include:

(a) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(b) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(c) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(d) a control chart approach that gives control limits for each constituent; or

(e) another statistical test method approved by the Executive Secretary.

(8) The Executive Secretary may specify additional or fewer sampling and analysis events, no less than annually, depending upon the nature of the ground water or the waste on a site specific basis considering:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill unit and downgradient monitoring well screen (minimum distance of travel); and

(e) resource value of the aquifer.

(9) The owner or operator must determine and report the ground water flow rate and direction in the upper most aquifer each time the ground water is sampled.

(10) If the owner or operator determines that there is a statistically significant change in any parameter or constituent at any monitoring well at the compliance point, the owner or operator must:

(a) within 14 days of receipt of the sample analysis results, enter the information in the operating record and notify the Executive Secretary of this finding in writing. The notification must indicate what parameters or constituents have shown statistically significant changes; and

(b) immediately resample the ground water in all monitoring wells, both background and downgradient, or in a subset of wells specified by the Executive Secretary, and determine:

(i) the concentration of all constituents listed in Section R315-308-4, including additional constituents that may have been identified in the approved ground water monitoring plan;

(ii) if there is a statistically significant change such that the established ground water quality protection level has been exceeded; and

(iii) notify the Executive Secretary in writing within seven days of receipt of the sample analysis results.

(c) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made and documented, the owner or operator may continue monitoring as specified in Subsection R315-308-2(4)(b).

(11) If, after 90 days, a successful demonstration as stipulated in Subsection R315-308-2(10)(c) is not made, the owner or operator must initiate the assessment monitoring program required as follows:

(a) within 14 days of the determination that a successful demonstration is not made, take one sample from each downgradient well and analyze for all constituents listed as Appendix II in 40 CFR Part 258, 1991 ed., which is adopted and incorporated by reference.

(b) for any constituent detected from Appendix II, 40 CFR Part 258, in the downgradient wells a minimum of eight

independent samples from the upgradient and four independent samples from each downgradient well must be collected and analyzed to establish background concentration levels for the constituents; and

(c) within 14 days of the receipt of the results of the analysis of the samples, place a notice in the operation record and notify the Executive Secretary in writing identifying the Appendix II, 40 CFR Part 258, constituents and their concentrations that have been detected as well as background levels. The Executive Secretary shall establish a ground water quality protection standard pursuant to Subsection R315-308-2(5) for any Appendix II, 40 CFR Part 258, constituent detected in the downgradient wells.

(d) The owner or operator shall thereafter resample:

(i) all wells on a quarterly basis for all constituents in Section R315-308-4, or the alternative list that may have been approved as part of the permit, and for those constituents detected from Appendix II, 40 CFR Part 258; and

(ii) the downgradient wells on an annual basis for all constituents in Appendix II, 40 CFR Part 258.

(e) If after two consecutive sampling events, the concentrations of all constituents being analyzed in Subsection R315-308-2(11)(d)(i) are shown to be at or below established background values, the owner or operator must notify the Executive Secretary of this finding and may, upon the approval of the Executive Secretary, return to the monitoring schedule and constituents as specified in Subsection R315-308-2(4)(b).

(12) If one or more constituents from Section R315-308-4 or the approved alternative list, or from those detected from Appendix II, 40 CFR Part 258, are detected at statistically significant levels above the ground water quality protection standard as established pursuant to Subsection R315-308-2(5) in any sampling event, the owner or operator must:

(a) within 14 days of the receipt of this finding, place a notice in the operating record identifying the constituents and concentrations that have exceeded the ground water quality standard. Within the same time period, the owner or operator must also notify the Executive Secretary and all appropriate local governmental and local health officials that the ground water quality standard has been exceeded;

(b) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well and analyze the sample for the constituents in Section R315-308-4 or the approved alternative list and the detected constituents from Appendix II, 40 CFR Part 258; and

(d) notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Subsections R315-308-2(12)(b) and (12)(c).

(e) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made, documented and approved, the owner or operator may continue monitoring as specified in Subsection R315-308-2(11)(d) or Subsection R315-308-2(11)(e) when applicable.

**R315-308-3. Corrective Action Program.**

(1) If, within 90 days, a successful demonstration as stated in Subsection R315-308-2(12)(e) is not made, the owner or operator must:

(a) continue to monitor as required in Subsection R315-308-2(11)(d).

(b) take any interim measures as required by the Executive Secretary or as necessary to ensure the protection of human health and the environment; and

(c) assess possible corrective action measures for the current conditions and circumstances of the disposal facility, addressing at least the following:

(i) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control exposure to any residual contamination;

(ii) time required to begin and complete the remedy;

(iii) the costs of remedy implementation;

(iv) public health or environmental requirements that may substantially affect implementation of the remedy; and

(v) prior to the selection of a remedy, discuss the results of the corrective measures assessment in a public meeting with interested and affected parties.

(d) Based on the results of the corrective measures assessment conducted and the comments received in the public meeting, the owner or operator must select a remedy which shall be submitted to the Executive Secretary.

(i) The corrective action remedy must:

(A) be protective of human health and the environment;

(B) use permanent solutions that are within the capability of best available technology;

(C) attain the established ground water quality standard;

(D) control the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of contaminants into the environment that may pose a threat to human health or the environment; and

(E) be approved by the Executive Secretary.

(ii) Within 14 days after the selection of the remedy the owner or operator must:

(A) amend the corrective action program required by Subsection R315-302-2(2)(e) if necessary and send a report to the Executive Secretary for approval describing the selected remedy and amendments, along with a schedule of implementation and estimated time of completion; and

(B) put in place the financial assurance mechanism as required by Rule R315-309 for corrective action and notify the Executive Secretary of the financial assurance mechanism and its effective date.

(2) Upon approval of the selected corrective action remedy, the Executive Secretary will notify the owner or operator of such approval and will require that the corrective action plan proceed according to the approved schedule.

(a) The Executive Secretary may also require facility closure if the ground water quality standard is exceeded and, in

addition, may revoke any permit and require reapplication.

(b) The Executive Secretary or the owner or operator may determine, based on information developed after implementation of the corrective action plan, that compliance with the requirements of Subsection R315-308-3(1)(d)(i) of this section are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques, upon approval by the Executive Secretary, that could practicably achieve compliance with the requirements.

(c) Upon completion of the remedy, the owner or operator must notify the Executive Secretary. The notification must contain certification signed by the owner or operator and a qualified ground-water scientist that the concentration of contaminant constituents have been reduced to levels below the specified limits of the ground water quality standard for a period of three years or an alternative length of time specified by the Executive Secretary. Upon approval of the Executive secretary the owner or operator shall:

(i) terminate corrective action measures;

(ii) continue detection monitoring as required in Subsection R315-308-2(4)(b); and

(iii) be released from the requirements of financial assurance for corrective action.

**R315-308-4. Constituents for Detection Monitoring.**

(1) The table lists the constituents for detection monitoring, the CAS number for the constituents, and the ground water quality standard for the constituents for any facility that is required to monitor ground water under Rule R315-308.

TABLE

Constituents for Detection Monitoring

| | CAS | Ground Water Protection Standard (mg/l) |
|---|---|---|
| Inorganic Constituents | | |
| Ammonia (as N) | 7664-41-7 | |
| Carbonate/Bicarbonate | | |
| Calcium | | |
| Chemical Oxygen Demand (COD) | | |
| Chloride | | |
| Iron | 7439-89-6 | |
| Magnesium | | |
| Manganese | 7439-96-5 | |
| Nitrate (as N | | |
| pH | | |
| Potassium | | |
| Sodium | | |
| Sulfate | | |
| Total Dissolved Solids (TDS) | | |
| Total Organic Carbon (TOC) | | |
| Heavy Metals | | |
| Antimony | 7440-36-0 | 0.006 |
| Arsenic | 7440-38-2 | 0.05 |
| Barium | 7440-39-3 | 2 |
| Beryllium | 7440-41-7 | 0.004 |
| Cadmium | 7440-43-9 | 0.005 |
| Chromium | | 0.1 |
| Cobalt | 7440-48-4 | 2 |
| Copper | 7440-50-8 | 1.3 |
| Lead | | 0.015 |
| Mercury | 7439-97-6 | 0.002 |
| Nickel | 7440-02-0 | 0.1 |
| Selenium | 7782-49-2 | 0.05 |
| Silver | 7440-22-4 | 0.1 |
| Thallium | | 0.002 |
| Vanadium | 7440-62-2 | 0.3 |
| Zinc | 7440-66-6 | 5 |
| Organic Constituents | | |
| Acetone | 67-64-1 | 4 |
| Acrylonitrile | 107-13-1 | 0.1 |
| Benzene | 71-43-2 | 0.005 |
| Bromochloromethane | 74-97-5 | 0.01 |
| Bromodichloromethane[1] | 75-27-4 | 0.1 |
| Bromoform[1] | 75-25-2 | 0.1 |
| Carbon disulfide | 75-15-0 | 4 |
| Carbon tetrachloride | 56-23-5 | 0.005 |
| Chlorobenzene | 108-90-7 | 0.1 |
| Chloroethane | 75-00-3 | 15 |
| Chloroform[1] | 67-66-3 | 0.1 |
| Dibromochloromethane[1] | 124-48-1 | 0.1 |
| 1,2-Dibromo-3-chloropropane | 96-12-8 | 0.0002 |
| 1,2-Dibromoethane | 106-93-4 | 0.00005 |
| 1,2-Dichlorobenzene (ortho) | 95-50-1 | 0.6 |
| 1,4-Dichlorobenzene (para) | 106-46-7 | 0.075 |
| trans-1,4-Dichloro-2-butene | 110-57-6 | |
| 1,1-Dichloroethane | 75-34-3 | 4 |
| 1,2-Dichloroethane | 107-06-2 | 0.005 |
| 1,1-Dichloroethylene | 75-35-4 | 0.007 |
| cis-1,2-Dichloroethylene | 156-59-2 | 0.07 |
| trans-1,2-Dichloroethylene | 156-60-5 | 0.1 |
| 1,2-Dichloropropane | 78-87-5 | 0.005 |
| cis-1,3-Dichloropropene | 10061-01-5 | 0.002 |
| trans-1,3-Dichloropropene | 10061-02-6 | 0.002 |
| Ethylbenzene | 100-41-4 | 0.7 |
| 2-Hexanone | 591-78-6 | 1.5 |
| Methyl bromide | 74-83-9 | 0.01 |
| Methyl chloride | 74-87-3 | 0.003 |
| Methylene bromide | 74-95-3 | 0.4 |
| Methylene chloride | 75-09-2 | 0.005 |
| Methyl ethyl ketone | 78-93-3 | 0.17 |
| Methyl iodide | 74-88-4 | |
| 4-Methyl-2-pentanone | 108-10-1 | 3 |
| Styrene | 100-42-5 | 0.1 |
| 1,1,1,2-Tetrachloroethane | 630-20-6 | 0.07 |
| 1,1,2,2-Tetrachloroethane | 79-34-5 | 0.005 |
| Tetrachloroethylene | 127-18-4 | 0.005 |
| Toluene | 108-88-3 | 1 |
| 1,1,1-Trichloroethane | 71-55-6 | 0.2 |
| 1,1,2-Trichloroethane | 79-00-5 | 0.005 |
| Trichloroethylene | 79-01-6 | 0.005 |
| Trichlorofluoromethane | 75-69-4 | 10 |
| 1,2,3-Trichloropropane | 96-18-4 | 0.04 |
| Vinyl acetate | 108-05-4 | 37 |
| Vinyl Chloride | 75-01-4 | 0.002 |
| Xylenes | 1330-20-7 | 10 |

[1] The ground water protection standard of 0.1 mg/l is for the total of Bromodichloromethane, Bromoform, Chloroform, and Dibromochloromethane.

**KEY: solid waste management, waste disposal**
**October 15, 1999 19-6-105**
**Notice of Continuation April 20, 1998 40 CFR 258**

**R315. Environmental Quality, Solid and Hazardous Waste.**
**R315-314. Facility Standards for Piles Used for Storage and Treatment.**
**R315-314-1. Applicability.**

(1) The requirements of Rule R315-314 apply to the following:

(a) a pile of solid waste containing garbage that has been in place for more than seven days;

(b) a pile of solid waste which does not contain garbage that has been in place for more than 90 days;

(c) a pile of material derived from waste tires where more than 1,000 passenger tire equivalents are stored at one site; and

(d) a pile of whole waste tires where more than 1,000 tires are stored at one site.

(2) The requirements of Rule R315-314 do not apply to the following:

(a) solid waste stored or treated in piles prior to recycling including compost piles and wood waste;

(b) solid waste stored in fully enclosed buildings, provided that no liquids or sludge containing free liquids are added to the waste;

(c) a pile of inert waste, as defined by Subsection R315-301-2(36); and

(d) a pile of whole waste tires located at a permitted waste disposal facility that is stored for not longer than one year.

(3) A site where crumb rubber, an ultimate product derived from waste tires, or waste tires that have been reduced to materials for beneficial use are stored for not longer than one year may receive a wavier of the requirements of Rule R315-314 from the Executive Secretary on a site specific basis.

(a) No wavier of the requirements of Rule R315-314 will be granted by the Executive Secretary without application from the owner or operator of the storage site.

(b) In granting a wavier of the requirements of Rule R315-314, the Executive Secretary may place conditions on the owner or operator of the storage site as to the sizes of piles, distance between piles, or other operational practices that will minimize fire danger or a risk to human health or the environment.

(c) The Executive Secretary may revoke a wavier of the Requirements of Rule R315-314 if the Executive Secretary finds that:

(i) any condition of the wavier is not met; or

(ii) the operation of the storage site presents a fire danger or a threat to human health or the environment.

**R315-314-2. General Requirements.**

(1) Each owner and operator shall:

(a) comply with the applicable requirements of Section R315-302-2; and

(b) remove all solid waste from the pile at closure to another permitted facility.

(2) Requirements for Solid Waste Likely to Produce Leachate.

(a) Waste piles shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile to prevent subsurface soil and potential ground water contamination and to allow collection of run-off and leachate. The liner shall be designed of sufficient thickness and strength to withstand stresses imposed by pile handling vehicles and the pile itself.

(b) A run-off collection and treatment system shall be designed, installed and maintained to collect and treat a 25-year storm event.

(c) Waste piles having a capacity of greater than 10,000 cubic yards shall have either:

(i) a ground water monitoring system that complies with Rule R315-308; or

(ii) a leachate detection, collection and treatment system.

(iii) For purposes of this subsection, capacity refers to the total capacity of all leachate-generating piles at one facility, e.g., two, 5,000 cubic yard piles will subject the facility to the requirements of this subsection.

(d) A run-on prevention system shall be designed and maintained to divert the maximum flow from a 25-year storm event.

(e) The Executive Secretary may require that the entire base or liner shall be inspected for wear and integrity and repaired or replaced by removing stored wastes or otherwise providing inspection access to the base or liner; the request shall be in writing and cite the reasons including valid ground water monitoring or leachate detection data leading to request such an inspection, repair or replacement.

(3) The length of time that solid waste may be stored in piles shall not exceed 1 year unless the Executive Secretary determines that the solid waste may be stored in piles for a longer time period without becoming a threat to human health or the environment.

(4) The Executive Secretary or an authorized representative may enter and inspect a site where waste is stored in piles as specified in Subsection R315-302-2(5)(b).

**R315-314-3. Requirements for a Waste Tire Storage Facility.**

(1) The definitions of Section R315-320-2 are applicable to the requirements for a waste tire storage facility.

(2) No waste tire storage facility may be established, maintained, or expanded until the owner or operator of the waste tire storage facility has obtained a permit from the Executive Secretary. The owner or operator of the waste tire storage facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) The owner or operator of a waste tire storage facility shall:

(a) submit the following for approval by the Executive Secretary:

(i) the information required in Subsections R315-310-3(1)(a), (b), and (c);

(ii) a plan of operation as required by Subsection R315-302-2(2);

(iii) a plot plan of the storage site showing:

(A) the arrangement and size of the tire piles on the site;

(B) the width of the fire lanes and the type and location of the fire control equipment; and

(C) the location of any on-site buildings and the type of fencing to surround the site;

(iv) a financial assurance plan including the date that the financial assurance mechanism becomes effective; and

(v) a vector control plan;

(b) accumulate tires only in designated areas;

(c) control access to the storage site by fencing;

(d) limit individual tire piles to a maximum of 5,000 square feet of continuous area in size at the base of the pile;

(e) limit the individual tire piles to 50,000 cubic feet in volume or 10 feet in height;

(f) insure that piles be at least 10 feet from any property line or any building and not exceed 6 feet in height when within 20 feet of any property line or building;

(g) provide for a 40 foot fire lane that contains no flammable or combustible material or vegetation between tire piles;

(h) effect a vector control program, if necessary, to minimize mosquito breeding and the harborage of other vectors such as rats or other animals;

(i) provide on-site fire control equipment that is maintained in good working order;

(j) display an emergency procedures plan and inspection approval by the local fire department and require all employees to be familiar with the plan;

(k) obtain an approval or permit from the local fire department, if required, and be in compliance with all applicable environmental and zoning requirements;

(l) establish financial assurance for clean-up and closure of the site:

(i) in the amount of $150 per ton of tires stored at the site; and

(ii) in the form of a trust fund, letter of credit, or other mechanism as approved by the Executive Secretary;

(m) maintain a record of the number of:

(i) tires received at the site;

(ii) tires shipped from the site

(iii) piles of tires at the site; and

(iv) tires in each pile; and

(n) meet the applicable reporting requirements of Subsection R315-302-2(4).

(4) Whole Tires Stored in a Tire Fence.

(a) Whole Tires stored in a tire fence are exempt from Subsections R315-314-3(3)(e), (f), and (g) but must:

(i) obtain a permit from the Executive Secretary as required by Subsection R315-314-3(3);

(ii) receive approval for establishing, maintaining, or expanding the tire fence from the local government and the local fire department and submit documentation of these approvals to the Executive Secretary; and

(iii) maintain the fence no more than one tire wide and eight feet high.

(b) An owner of a tire fence may receive a wavier from the requirements of Subsection R315-314-3(4)(a)(i) if the Executive Secretary receives written notice from the owner of the tire fence on or before November 15, 1999 that documents and certifies that:

(i) the tire fence was in existence prior to October 15, 1999; and

(ii) no tires have been added to the fence after October 14, 1999.

(5) Each tire recycler, as defined by Subsection 26-32a-103(18), that stores tires in piles prior to recycling shall comply with the following requirements:

(a) if the tire recycler documents that the waste tires are stored for five or fewer days, the tire recycler shall:

(i) meet the requirements of Subsections R315-314-3(3)(b) through (g); or

(ii) obtain a waiver from the requirements of Subsections R315-314-3(3)(b) through (g) from the local fire department; or

(b) if the tire recycler does not document that the waste tires are stored for five or fewer days, the tire recycler shall be considered a waste tire storage facility and shall:

(i) meet the requirements of Subsections R315-314-3(2) and (3); and

(ii) the amount of financial assurance required by Subsection R315-314-3(3)(l) shall be $150 per ton of tires held as the average inventory during the preceding year of operation.

**KEY: solid waste management, waste disposal**

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**R315. Environmental Quality, Solid and Hazardous Waste.**
**R315-315. Special Waste Requirements.**
**R315-315-1. General Requirements.**

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions shall include, where required and approved by the Executive Secretary, a separate area for disposal of the wastes, designated by appropriate signs.

(2) The following wastes are prohibited from disposal at a solid waste disposal facility.

(a) Lead acid batteries must be recycled and otherwise managed in accordance with Sections 19-6-601 through 607.

(b) Used oil must be recycled and otherwise managed in accordance with Rule R315-15.

**R315-315-2. Asbestos Waste.**

(1) Asbestos waste shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Sections R307-1-4.12 and R307-1-8 and 40 CFR Part 61, Subpart M, 1995 ed.

(2) No transporter or disposal facility shall accept friable asbestos waste unless the waste has been adequately wetted and containerized.

(a) Asbestos waste is adequately wetted when its moisture content prevents fiber release.

(b) Asbestos waste is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Asbestos waste slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. The Executive Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All asbestos containers shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold asbestos.

(3) Disposal of Asbestos Waste.

(a) Upon entering the disposal site, the transporter of the asbestos waste shall notify the landfill operator that the load contains asbestos by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days.

(b) Upon the receipt of the asbestos waste, the landfill operator shall require that the vehicles that have transported asbestos waste be marked with warning signs as specified in 40 CFR Part 61.149(d)(1)(iii), 1995 ed., which is adopted and incorporated by reference. The operator shall also inspect the loads to verify that the asbestos waste is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Executive Secretary if the operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste material which prevents fiber release prior to compacting the waste in the landfill.

(c) During waste deposition and covering, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only asbestos waste, or may dispose of asbestos at the working face of the landfill;

(ii) shall place asbestos containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours, shall completely cover the containerized waste with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no asbestos. If the waste is improperly containerized, it must be completely covered immediately with six inches of material containing no asbestos; and

(iv) shall not compact asbestos containing material until completely covered with a minimum of six inches of material containing no asbestos.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 200 feet along the perimeter of the sections where asbestos waste is deposited that comply with the requirements of 40 CFR Part 61.154(b), 1995 ed., which is adopted and incorporated by reference; and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

**R315-315-3. Ash.**

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted Class III ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

**R315-315-4. Bulky Waste.**

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell or into a separate disposal area.

**R315-315-5. Sludge Requirements.**

(1) No water treatment plant sludge, digested waste water treatment plant sludge, or septage containing free liquids may be disposed in any landfill with other solid waste.

(2) Water treatment plant sludge, digested waste water treatment plant sludge, or septage containing no free liquids may be placed at or near the bottom of the landfill working face and covered with other solid waste or other suitable cover

material.

(3) Disposal of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

**R315-315-6. Dead Animals.**

Dead animals received at the facility shall be deposited onto the working face at or near the bottom of the cell with other solid waste, or into a separate disposal trench provided they are covered daily with a minimum of six inches of earth to minimize odors and the propagation and harborage of rodents or insects.

**R315-315-7. PCB Containing Waste.**

(1) Any facility that disposes of nonhazardous waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following waste containing PCBs may be disposed in a permitted Class I, II, III, IV, or V Landfill or in a permitted incinerator or energy recovery facility:

(a) waste containing PCBs at concentrations less than 50 ppm;

(b) PCB household waste as defined by 40 CFR 761.3 (1998); and

(c) small quantities of intact, non-leaking small PCB capacitors from fluorescent lights.

(3) Waste containing PCBs at concentrations of 50 ppm, or higher, are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320 except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher:

(i) an existing facility, as defined by Subsection R315-301-2(21), that is permitted under 40 CFR 761.70 or .75 (1998) to accept waste containing PCBs; or

(ii) a new facility, as defined by Subsection R315-301-2(47), that is permitted under 40 CFR 761.70, .71, .72, or .75 (1998) to accept waste containing PCBs, which facility must also receive approval under Rules R315-301 through 320; or

(b) when approved by the Executive Secretary, the following wastes may be disposed at a permitted landfill or may be disposed at an incinerator that meets the requirements of Subsection R315-315-7(3)(a):

(i) PCB bulk products regulated by 40 CFR 761.62(b) (1998);

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3 (1998);

(iii) drained PCB articles as defined by 40 CFR 761.3 (1998);

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A) (1998);

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii) (1998); or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2) (1998).

**KEY: solid waste management, waste disposal**
**October 15, 1999** **19-6-105**
**Notice of Continuation April 28, 1998**

**R315. Environmental Quality, Solid and Hazardous Waste.**
**R315-317. Other Processes, Variances, and Violations.**
**R315-317-1. Other Processes, Methods, and Equipment.**

Processes, methods, and equipment other than those specifically addressed in Rules R315-301 through 320 will be considered on an individual basis by the Executive Secretary upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

**R315-317-2. Variances.**

(1) Variances will be granted by the Board only to the extent allowed under Federal law.

(2) Any owner or operator of a solid waste facility may apply to the Board for a variance from any portion of Rules R315-301 through 320 except as specified in Subsection R315-317-2(1). The application shall be accompanied by such information as the Executive Secretary may require. All applications for a variance shall be subject to the public comment requirements of Subsection R315-311-3. The Board may grant such variance, if it finds that:

(a) the solid waste handling practices or location do not endanger public health, safety, or the environment; and

(b) the application of, or compliance with, any requirement of Rules R315-301 through 320 would cause undue or unreasonable hardship to any person; and

(c) circumstances of the solid waste disposal site location, operating procedures, or other conditions indicate that the purpose and intent of Rules R315-301 through 320 as well as other state and federal regulations can be achieved without strict adherence to all of the requirements.

(3) If a variance is granted by the Board under Section R315-317-2 for a period longer than one year, the variance shall contain a timetable for coming into compliance and shall be conditioned on adherence to that timetable.

**R315-317-3. Violations, Orders, and Hearings.**

(1) Whenever the Executive Secretary or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through 320, the Executive Secretary may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Executive Secretary may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through 320.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is served, the person specified therein files a written request, containing the information specified in Subsection 63-46b-3(3), for agency action before the Board as provided in Section R315-12-3. Title 63, Chapter 46b and Rule R315-12 shall govern the conduct of hearings before the Board.

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**Notice of Continuation April 28, 1998** **19-6-108**
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**19-6-112**

**R315. Environmental Quality, Solid and Hazardous Waste.**
**R315-320. Waste Tire Transporter and Recycler Requirements.**
**R315-320-1. Authority, Purpose, and Inspection.**

(1) The waste tire transporter and recycler requirements are promulgated under the authority of the Waste Tire Recycling Act, Title 26, Chapter 32a, and the Solid and Hazardous Waste Act Title 19, Chapter 6, to protect human health; to prevent land, air and water pollution; to conserve the state's natural, economic, and energy resources; and to promote recycling of waste tires.

(2) Except for Subsections R315-320-4(7) and R315-320-5(7), which apply to the application fees for the registration of a waste tire transporter and a waste tire recycler throughout the state, Rule R315-320 does not supersede any ordinance or regulation adopted by the governing body of a political subdivision or local health department if the ordinance or regulation is at least as stringent as Rule R315-320, nor does Rule R315-320 relieve a tire transporter or recycler from the requirement to meet all applicable local ordinances or regulations.

(3) The Executive Secretary or an authorized representative may enter and inspect the site of a waste tire transporter or a waste tire recycler as specified in Subsection R315-302-2(5)(b).

**R315-320-2. Definitions.**

Terms used in Rule R315-320 are defined in Sections R315-301-2 and 26-32a-103. In addition, for the purpose of this rule, the following definitions apply:

(1) "Crumb rubber" means waste tires that have been ground, shredded or otherwise reduced in size such that the particles are less than or equal to 1/4 inch in diameter and are 95% wire free by weight.

(2) "Demonstrated market" exists when an "arms length transaction" has been completed and documented which meets the following conditions:

(a) the transaction must be between a willing seller and a willing buyer who have no other business relationship or responsibility to each other; and

(b) the transaction is for reasonable quantity of material derived from waste tires at a price dictated by current economic conditions.

(c) The potential for sale or the possibility of sale does not constitute the demonstration of a market.

(3) "Shredded Tires" means waste tires that have been reduced in size so that the greatest dimension of a minimum of 60 percent, by weight, of the pieces is no more than six inches and the greatest dimension of any piece is no more than 12 inches.

(4) "Vehicle identification number" means the identifying number assigned by the manufacture or by the Utah Motor Vehicle Division of the Utah Tax Commission for the purpose of identifying the vehicle.

(5) "Waste tire generator" means a person, an individual, or an entity that may cause waste tires to enter the waste stream. A waste tire generator may include:

(a) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, or other person, individual, or entity that removes or replaces tires on a vehicle other than their personal vehicle; or

(b) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, a waste tire transporter, a waste tire recycler, a waste tire processor, a waste tire storage facility, or a disposal facility that receives waste tires from a person, an individual, or an entity.

(6) "Waste tire recycling" or "recycling" means:

(a) the burning of waste tires or material derived from waste tires as a fuel for energy recovery; or

(b) the manufacture or creation of an ultimate product that has a demonstrated market where material derived from waste tires is used as a raw material in the manufacture or creation of the ultimate product.

(c) Waste tire recycling does not include ultimate products:

(i) that are used in a beneficial use; or

(ii) that do not have a demonstrated market.

**R315-320-3. Landfilling of Waste Tires and Material Derived from Waste Tires.**

(1) Landfilling of Whole Tires. Except for tires from devices moved exclusively by human power and tires with a rim diameter greater than 24.5 inches, an individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill.

(2) Landfilling of Material Derived from Waste Tires.

(a) An individual, including a waste tire transporter, may dispose of material derived from waste tires in a landfill which has a permit issued by the Executive Secretary.

(b) Except for the beneficial use of material derived from waste tires at a landfill, material derived from waste tires shall be disposed in a separate landfill cell that is designed and constructed, as approved by the Executive Secretary, to keep the material in a clean and accessible condition so that it can reasonably be retrieved from the cell for future recycling.

(3) Reimbursement for Landfilling Shredded Tires.

(a) The owner or operator of a permitted landfill may apply for reimbursement for landfilling shredded tires as specified in Subsection R315-320-6(1).

(b) To receive the reimbursement, the owner or operator of the landfill must meet the following conditions:

(i) the waste tires shall be shredded;

(ii) the shredded tires shall be stored in a segregated cell or other landfill facility that ensures the shredded tires are in a clean and accessible condition so that they can be reasonably retrieved and recycled at a future time; and

(iii) the design and operation of the landfill cell or other landfill facility has been reviewed and approved by the Executive Secretary prior to the acceptance of shredded tires.

(4) Violation of Subsections R315-320-3(1), (2), or (3) is subject to enforcement proceedings and a civil penalty as specified in Subsection 26-32a-103.5(4).

**R315-320-4. Waste Tire Transporter Requirements.**

(1) Each waste tire transporter who transports waste tires within the state of Utah must apply for, receive and maintain a current waste tire transporter registration certificate from the Executive Secretary.

(2) Each applicant for registration as a waste tire transporter shall complete a waste tire transporter application form provided by the Executive Secretary and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) list of vehicles used including the following:

(i) description of vehicle;

(ii) license number of vehicle;

(iii) vehicle identification number; and

(iv) name of registered owner;

(e) name of business owner;

(f) name of business operator;

(g) list of sites to which waste tires are to be transported;

(h) liability insurance information as follows:

(i) name of company issuing policy;

(ii) amount of liability insurance coverage; and

(iii) term of policy.

(3) A waste tire transporter shall demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising form transporting waste tires. The waste tire transporter shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000.

(4) A waste tire transporter shall notify the Executive Secretary of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-4(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-4(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-4(3); and

(c) payment of the fee as required by the Annual Appropriations Act.

(6) A waste tire transporter registration certificate is not transferable and shall be issued for the term of one year.

(7) If a waste tire transporter is required to be registered by a local government or a local health department:

(a) the waste tire transporter shall pay an annual registration fee to the local government or the local health department not to exceed to the following schedule:

(i) for one through five trucks, $50; and

(ii) $10 for each additional truck;

(b) the Executive Secretary shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-4(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-4(5)(c); and

(c) the registration certificate shall be valid for one year.

(8) Waste tire transporters storing tires in piles must meet the requirements of Rule R315-314.

(9) Reporting Requirements.

(a) Each waste tire transporter shall submit a quarterly activity report to the Executive Secretary. The activity report shall be submitted on or before the 30th of the month following the end of each quarter.

(b) The activity report shall contain the following information:

(i) the number of waste tires collected at each waste tire generator, including the name, address, and telephone number of the waste tire generator;

(ii) the number of tires shall be listed by the type of tire based on the following:

(A) passenger/light truck tires or tires with a rim diameter of 19.5 inches or less;

(B) truck tires or tires ranging in size from 7.50x20 to 12R24.5; and

(C) other tires such as farm tractor, earth mover, motorcycle, golf cart, ATV, etc.

(iii) the number or tons of waste tires shipped to each waste tire recycler or processor for a waste tire recycler, including the name, address, and telephone number of each recycler or processor;

(iv) the number of tires shipped as used tires to be resold;

(v) the number of waste tires placed in a permitted waste tire storage facility; and

(vi) the number of tires disposed in a permitted landfill, or put to other legal use.

(c) The activity report may be submitted in electronic format.

(10) Revocation of Registration.

(a) The registration of a waste tire transporter may be revoked upon the Executive Secretary finding that:

(i) the activities of the waste transporter that are regulated under Section R315-320-4 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire transporter has made a material misstatement of fact in applying for or obtaining a registration as a waste tire transporter or in the quarterly activity report required by Subsection R315-320-4(9);

(iii) the waste tire transporter has provided a recycler with a material misstatement of fact which the recycler subsequently used as documentation in a request for partial reimbursement under Section 26-32a-108;

(iv) the waste tire transporter has violated any provision of the Waste Tire Recycling Act, Title 26 Chapter 32a, or any order, approval, or rule issued or adopter under the Act;

(v) the waste tire transporter failed to meet or no longer meets the requirements of Section R315-320-4;

(vi) the waste tire transporter has been convicted under Subsection 26-32a-112.9; or

(vii) the waste tire transporter has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-10(1)(a), the statements, actions, or failure to act of a waste tire transporter shall include the statements, actions, or failure to act of any

officer, director, agent or employee of the waste tire transporter.

(d) The administrative procedures set forth in Rule R315-12 shall govern revocation of registration.

**R315-320-5. Waste Tire Recycler Requirements.**

(1) Each waste tire recycler operating within the state and each waste tire recycler operating outside the state, but requesting reimbursement allowed by Subsection 26-32a-107(1) and Section R315-320-6, must apply for, receive and maintain a current waste tire recycler registration certificate from the Executive Secretary.

(2) Each applicant for registration as a waste tire recycler shall complete a waste tire recycler application form provided by the Executive Secretary and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) owner name;

(e) operator name;

(f) description of the recycling process;

(g) proof that the recycling process described in Subsection R315-320-5(2)(f) is being conducted at the site or that the recycler has the ability to conduct the process at the site;

(h) estimated number of tires to be recycled each year; and

(i) liability insurance information as follows:

(i) name of company issuing policy;

(ii) proof of the amount of liability insurance coverage; and

(iii) term of policy.

(3) A waste tire recycler shall demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from storing and recycling waste tires. The waste tire recycler shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000.

(4) A waste tire recycler shall notify the Executive Secretary of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-5(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-5(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-5(3); and

(c) payment of the fee as required by the Annual Appropriations Act.

(6) A waste tire recycler registration certificate is not transferable and shall be issued for a term of one year.

(7) If a waste tire recycler is required to be registered by a local government or a local health department:

(a) the waste tire recycler shall pay an annual registration fee to the local government or local health department not to exceed the to the following schedule:

(i) if up to 200 tons of waste tires are recycled per day, the fee is $300;

(ii) if 201 to 700 tons of waste tires are recycled per day, the fee is $400; or

(iii) if over 700 tons of waste tires are recycled per day, the fee is $500.

(b) The Executive Secretary shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-5(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-5(5)(c).

(c) The registration certificate shall be valid for one year.

(8) Waste tire recyclers must meet the requirements of Rule R315-312 for recycling facilities and the requirements of Rule R315-314 for waste tires stored in piles.

(9) Revocation of Registration.

(a) The registration of a tire recycler may be revoked upon the Executive Secretary finding that:

(i) the activities of the waste tire recycler that are regulated under Section R315-320-5 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire recycler has made a material misstatement of fact in applying for or obtaining a registration as a waste tire recycler;

(iii) the waste tire recycler has made a material misstatement of fact in applying for partial reimbursement under Section 26-32a-108;

(iv) the waste tire recycler has violated any provision of the Waste Tire Recycling Act, Title 26 Chapter 32a, or any order, approval, or rule issued or adopted under the Act;

(v) the waste tire recycler has failed to meet or no longer meets the requirements of Subsection R315-320-5(1);

(vi) the waste tire recycler has been convicted under Subsection 26-32a-112.9; or

(vii) the waste tire recycler has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-5(9)(a), the statements, action, or failure to act of a waste tire recycler shall include the statements, actions, or failure to act of any officer, director, agent, or employee of the waste tire recycler.

(d) The administrative procedures set forth in Rule R315-12 shall govern revocation of registration.

**R315-320-6. Reimbursement for Recycling Waste Tires.**

(1) Any waste tire recycler who recycles, at an out-of-state location, tires that are generated within the state, may apply for partial reimbursement to the Executive Secretary, as provided in Subsection 26-32a-107(1)(b).

(a) A waste tire recycler who requests partial reimbursement from the Executive Secretary, shall meet the following requirements:

(i) the recycler must be registered as required by Section R315-320-5;

(ii) the recycling site must be outside the state; and

(iii) the recycler must demonstrate that the waste tires or material derived from waste tires were generated within the

State of Utah and either

(A) removed and transported by a tire transporter registered as required by Section R315-320-4 or a recycler registered as required by Section R315-320-5 or a person as defined in Subsection 26-32a-103(28)(c); or

(B) generated by a private person who is not a waste tire transporter as defined in Section 26-32a-103(28), and that person brings the waste tires to the recycler.

(b) A waste tire recycler may claim partial reimbursement for waste tires removed from tire piles subject to:

(i) the requirements of Subsections R315-320-6(1) and 26-32a-107.5;

(ii) submission of the application as required in Subsection R315-320-6(1)(c); and

(iii) the application required in Subsection R315-320-6(1)(c) may be submitted at a minimum of monthly intervals.

(c) Any waste tire recycler requesting partial reimbursement from the Executive Secretary, must submit an application on a form designated by the Executive Secretary and shall provide the following:

(i) business name;

(ii) name of owner;

(iii) name of operator;

(iv) a brief description of the recycler's business;

(v) quantity, in tons, of waste tires or tire derived material for which partial reimbursement is being claimed, accompanied by documentation of recycling;

(vi) a description of how waste tires or material derived from waste tires were recycled;

(vii) a demonstration that the requirements of Subsection 26-32a-107(4) have been met; and

(viii) a demonstration that at least 100,000 waste tires will be recycled each year.

(d) Any waste tire recycler that applies to the Executive Secretary for partial reimbursement for the recycling of crumb rubber or chipped tires must show that the material has been used as a component in a product.

(e) No partial reimbursement will be approved by the Executive Secretary for a recycler that is not the holder of a current, valid waste tire recycler registration at the time of submittal of the request.

(2) No partial reimbursement request submitted by a waste tire recycler for the first time, or the first time a specific recycling process or a beneficial use activity is used, shall be approved by a local health department under Section 26-32a-108 until the local health department has received from the Executive Secretary a written certification that the Executive Secretary has determined the processing of the waste tires to be recycling or a beneficial use. If the reimbursement request contains sufficient information, the Executive Secretary shall make the recycling or beneficial use determination and notify the local health department in writing within 15 days of receiving the request for determination.

(3) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information required by Section R315-320-5 or Section R315-320-6 shall be ineligible to receive any reimbursement and shall return to the Division of Finance any reimbursement previously received that was obtained through the use of false information.

**R315-320-7. Responsibilities of Executive Secretary For Processing Partial Reimbursement Requests for Waste Tires Recycled Outside Utah.**

(1) The Executive Secretary, upon receipt of an application for reimbursement, shall:

(a) review the application for completeness;

(b) if the application is the initial application of the recycler, the Executive Secretary may conduct an on-site investigation of the recycler's operation and waste tire use; and

(c) determine whether the recycler has met the requirements of Subsection R315-320-6(1).

(2) If the Executive Secretary determines that the recycler qualifies for partial reimbursement, an application for partial reimbursement along with a brief report of the results of the investigation, if conducted, and the Executive Secretary shall submit the dollar amount approved for payment to the Division of Finance.

**R315-320-8. Reimbursement for the Removal of an Abandoned Tire Pile or a Tire Pile at a Landfill Owned by a Governmental Entity.**

(1) A county or municipality applying for payment for removal of an abandoned tire pile or a tire pile at a county or municipal owned landfill shall meet the requirements of Section 26-32a-107.7.

(2) The following items shall be submitted to the Executive Secretary when requesting a determination of reasonability of a bid as specified in Subsection 26-32a-107.7(2):

(a) a copy of the bid;

(b) a letter from the local health department stating that the tire pile is abandoned or that the tire pile is at a landfill owned or operated by a governmental entity and certifying that no tires were added to the pile after June 30, 1999; and

(c) a written statement from the county or municipality that the bidding was conducted according to the legal requirements for competitive bidding.

(3) The Executive Secretary will review the submitted documentation in accordance with Subsection 26-32a-107.7(2) and will inform the county or municipality if the bid is reasonable.

(4) A determination of reasonability of the bid will be made and the county or municipality notified withing 30 days of receipt of the request by the Executive Secretary.

(5) A bid determined to be unreasonable shall not be deemed eligible for reimbursement.

**KEY: solid waste management, waste disposal**
**October 15, 1999** **19-6-105**
**Notice of Continuation March 12, 1999** **26-32a**

**R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.**

**R388-801. AIDS Testing and Reporting for Emergency Medical Services Providers Rule.**

**R388-801-1. Authority and Purpose.**

1. Authority - The AIDS Testing and Reporting for Emergency Medical Services Providers Rule is established under authority of Section 26-6a-9.

2. Purpose - To establish procedures for patient testing and reporting following a significant exposure of an emergency medical services provider.

**R388-801-2. Definitions.**

1. "Department" means the Utah Department of Health.

2. "Designated agent" means a person or persons designated by an agency employing or utilizing emergency medical services providers as employees or volunteers to receive and distribute test results in accordance with this rule.

3. "Disease" means Acquired Immunodeficiency Syndrome, Human Immunodeficiency Virus (HIV) infection, or Hepatitis B antigen positivity.

4. "Emergency medical services (EMS) agency" means an agency, entity or organization that employs or utilizes emergency medical services providers as employees or volunteers.

5. "Emergency medical services provider" means an Emergency Medical Technician as defined in Section 26-8-2, a peace officer as defined in Section 77-1a-1, local fire department personnel, or officials or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency medical care for an emergency medical services agency either as an employee or as a volunteer.

6. "Patient" means any individual cared for by an emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, and prisoners or persons in the custody of the Department of Corrections.

7. "Receiving facility" means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

8. "Significant exposure" means:

8.1. Contact of an emergency medical services provider's broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration, or;

8.2. That a needle stick, or scalpel or instrument wound has occurred to the emergency medical services provider in the process of caring for a patient.

**R388-801-3. Emergency Medical Services Provider Responsibility.**

1. The EMS provider shall document and report all significant exposures to the receiving facility, the designated agent, and the department. The reporting process is as follows:

1.1. The exposed EMS provider shall complete the department Exposure Report Form (ERF) at the time the patient is delivered and provide a copy to a person at the receiving facility authorized by the facility to receive that form. In the event that the exposed EMS provider does not accompany the patient to the receiving facility, he may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive that form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

1.2. The exposed EMS provider shall, within three days of the incident, also submit copies of the ERF to the designated agent and, by registered mail or in person, to the department.

1.3. The exposed EMS provider should retain a copy of the ERF for his own records, in the event that it is subsequently necessary to file a workers' compensation claim under Sections 26-6a-10 through 26-6a-14.

**R388-801-4. Receiving Facility Responsibility.**

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available, within the receiving facility or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of patients when HIV testing has been requested by EMS providers. The counselor shall contact the patient prior to release from the facility, or if the patient remains in the facility, contact shall be made within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the patient to draw a blood sample for HIV testing. In conjunction with this request, the patient must be advised of his right to refuse testing and be advised that if he refuses to be tested that fact will be forwarded to the department and the designated agent. Testing is authorized only when the patient, his next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, or if the patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the department. If consent is received, the receiving facility shall draw a sample of the patient's blood and send it, along with the ERF, to the Utah Department of Health, Division of Laboratory Services for testing.

3. The receiving facility shall arrange for Hepatitis B testing according to standard procedures and report the result to the designated agent at the EMS agency.

**R388-801-5. EMS Agency Responsibility.**

The EMS agency shall appoint a representative as designated agent to fulfill the responsibilities specified in these rules.

**R388-801-6. Designated Agent Responsibility.**

1. The designated agent, upon receipt of an ERF from the EMS provider, shall review the details regarding the significant exposure and recommend appropriate measures, if any, considering the most recent Centers for Disease Control guidelines, to EMS agency management.

2. The designated agent, upon receipt of the HIV test result from the department, shall immediately report the result, by case number, not name, to the exposed EMS provider.

3. The designated agent, upon receipt of the Hepatitis B test result from the receiving facility, shall immediately report

the result to the exposed EMS provider.

4. The designated agent, upon receipt of refusal of testing, shall report that refusal to the EMS provider.

5. The designated agent shall maintain confidential records in conformance with Section 26-6a-7.

**R388-801-7. Department Responsibility.**

1. The department shall designate a representative or representatives in the Utah Department of Health, Division of Laboratory Services who shall receive the HIV blood sample with a copy of the ERF, conduct the test and report the test result to the Bureau of HIV/AIDS Prevention and Control, and return the copy of the ERF to the Bureau of HIV/AIDS Prevention and Control.

2. The department shall designate a representative(s) in the Bureau of HIV/AIDS Prevention and Control who shall:

2.1. Receive and process copies of all ERF's submitted by the EMS provider or receiving facility to the department;

2.2. Report refusals to test or the results of HIV testing, by case number, not name, to the designated agent; and

2.3. Report HIV test results to the patient and complete all post test counseling required by Chapter 6a, Title 26.

3. The department shall assess to the EMS agency with which the EMS provider is affiliated the actual cost of testing and post test counseling of the patient.

4. The department shall develop and make available a pre-test counseling protocol to all receiving facilities.

**R388-801-8. Confidentiality Responsibility.**

1. Information concerning test results obtained under these rules that identify the patient shall be maintained strictly confidential by the hospital, health care or other facility that received or tested the patient, designated agent, EMS provider, EMS agency, and the department, except as provided by these rules. That information may not be made public upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided by this chapter.

2. The information described in R388-801-8.1 may be released with the written consent of the patient, or if the patient is deceased or incapable of giving informed consent, with the written consent of his next-of-kin, legal guardian, or executor of his estate.

3. Information concerning test results obtained under the authority of these rules may be released in a way that no patient is identifiable.

**R388-801-9. Penalties.**

Penalties for violation of R388-801 are prescribed under Sections 26-6a-7 and 26-23-6.

**KEY: communicable diseases, AIDS***
**September 1, 1996** **26-6a**
**Notice of Continuation October 13, 1997**

**R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.**
**R388-802. HIV Positive Student or School Employee Rule.**
**R388-802-1. Authority and Purpose.**

1. The HIV Positive Student or School Employee Rule is established under authority of Section 26-1-30.

2. The purpose of R388-802 is to establish standards relating to HIV infection in the schools in order to (a) reduce the risk to susceptible individuals and (b) protect infected individuals against both unreasonable health risks and unnecessary restrictions in activities and associations.

**R388-802-2. Definitions.**

1. "Director" means the executive director of the Utah Department of Health.

2. "Employee" means anyone employed by a school or serving as a volunteer with the permission of a school.

3. "HIV" means human immunodeficiency virus.

4. "HIV Infection" is defined as an indication of the presence of human immunodeficiency virus (HIV) as detected by any of the following:

4.1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.

4.2. Presence of HIV antigen.

4.3. Isolation of HIV.

4.4. Demonstration of HIV proviral DNA.

5. "Review committee" or "committee" means a group consisting of a school administrator, a representative from the local health department, the subject's physician, the subject or, in the case of a minor, the subject's parents or guardian. The committee is appointed and chaired by the school administrator.

6. "School" means a licensed or unlicensed public or private nursery school, preschool, elementary or secondary school, day-care center, child-care facility, family-care facility, or head-start program.

7. "School administrator" means the person designated by the superintendent to implement this rule.

8. "School board" means the board of education of an affected public school district or the governing body of an affected facility or program which is not part of a public school district.

9. "Student" means anyone enrolled in a school.

10. "Subject" means a person who is the focus of deliberations by a review committee.

11. "Superintendent" means the superintendent of an affected school district or the chief administrative officer of an affected school which is not part of a public school district.

**R388-802-3. Confidentiality.**

1. The identities or other case details of HIV-infected subjects shall not be disclosed to any person other than the members of the review committee and the pertinent superintendent.

2. Penalties for violation of confidentiality are prescribed under Section 26-25a-103.

**R388-802-4. Anti-discrimination.**

1. In the school setting, no person shall be discriminated against, or denied activities or associations, based solely upon a diagnosis of HIV infection except as permitted under this rule.

**R388-802-5. Requirements for Determining if a Student or Employee Infected with HIV Should Remain in the Regular Classroom or Job Assignment.**

1. Upon notification that a student or employee has been diagnosed with HIV infection, the school administrator shall convene a review committee.

2. A student or employee infected with HIV shall continue in his regular classroom or job assignment until a review committee can meet and formulate recommendations.

3. The committee shall review all pertinent information including current findings and recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health; apply that information to the subject and the nature of activities and associations in which the subject is involved with the school; and establish written findings of fact and recommendations based upon reasonable medical judgments and other information concerning the following:

3.1. The nature of the risk of transmission of HIV relevant to the activities of the subject in the school setting;

3.2. The probability of the risk, particularly the reasonable likelihood that HIV could be transmitted to other persons by the subject in the school setting;

3.3. The nature and the probability of any health related risks to the subject;

3.4. If restrictions are determined to be necessary, what accommodations could be made by the school to avoid excessive limitations on activities and associations of the subject.

4. The review committee shall forward its findings and recommendations to the superintendent.

5. The school administrator will implement the recommendations without delay.

6. The school administrator shall immediately advise the subject or, in the case of a minor, the subject's parents or guardian, in writing, of the decision of the review committee and that continued participation in the school setting may result in exposure to other communicable diseases.

7. The school administrator shall review the committee's decision on a regular basis and may reconvene the committee if, in his opinion, the facts of the case have changed.

**R388-802-6. Liability.**

Responsibility for continued participation in the classroom or job assignment, despite potential personal risk, shall be left to the discretion of the subject or, in case of a minor, the subject's parents or guardian.

**R388-802-7. Appeal Process.**

1. The superintendent or any member of the review committee may appeal the recommendation of the committee by submitting a written appeal within ten school days for students or ten working days for employees, after receiving notice of the committee's recommendations. If the appellant's concerns relate to medical issues, the appeal shall be submitted to the director, and the director, or designee, may order restrictions on the school-related activities or associations of the subject or may

stay implementation of the committee's recommendations. If the concerns relate to the school's ability to provide an accommodation, the appeal shall be directed to the school board.

2. The appellant shall submit copies of any appeal to the director, the superintendent, and all other members of the review committee.

3. The director or the school board shall review the findings and recommendations of the committee and any additional information that the director or board finds to be pertinent to the question raised in the appeal, and shall render a final decision in writing within ten school days for students or ten working days for employees.

4. Copies of the decision shall be sent to the appellant, members of the review committee, and the superintendent.

5. The superintendent shall implement the decision without delay.

6. Judicial review of any decision rendered under this section by the director or the school board may be secured by persons adversely affected thereby by filing an action for review in the appropriate court of law.

**R388-802-8. Special Procedures.**

1. A superintendent may suspend a subject from school or school employment for a period not to exceed ten school days for students or ten working days for employees, prior to receiving the recommendation of a review committee if the superintendent determines that there are emergency conditions which present a reasonable likelihood that suspension is medically necessary to protect the subject or other persons.

2. If the subject is unable to obtain the services of a physician to serve on the review committee, the local health officer may appoint a licensed physician to provide consultation.

**R388-802-9. Procedures for Handling Blood or Body Fluids.**

1. Each school shall adopt routine procedures for handling blood or body fluids, including sanitary napkins, regardless of whether students or employees with HIV infections are known to be present. The procedures should be consistent with recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health.

**R388-802-10. Penalties.**

1. Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including R388-802, are prescribed under Section 26-23-6.

**KEY: communicable diseases, AIDS*, HIV***
**1989 26-1-30**
**Notice of Continuation October 13, 1997**

**R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.**
**R388-803. HIV Test Reporting.**
**R388-803-1. Authority and Purpose.**

(1) Authority for this rule is established in Title 26, Chapter 6, Sections 3 and 3.5 of the Utah Communicable Disease Control Act.

(2) This rule establishes requirements for:

(a) reporting screening, diagnostic, and treatment test results related to Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS); and

(b) partner identification and notification.

(c) Reporting of HIV infection and AIDS is required by R386-702, Communicable Disease Rule.

**R388-803-2. Reporting of AIDS, HIV Infection, and Related Tests.**

(1) A health care provider who administers or causes to have administered any of the following tests shall report all positive results to the Utah Department of Health or the local health department where the patient resides:

(a) presence of antibodies to HIV, repeatedly reactive on two or more tests; presence of antibodies to HIV that are verified by a positive confirmatory test; repeatedly reactive tests with indeterminate confirmatory tests.

(b) presence of HIV antigen;

(c) isolation of HIV;

(d) demonstration of HIV proviral DNA;

(e) demonstration of HIV specific nucleic acids; and

(f) any other test or condition indicative of HIV infection.

(2) A health care provider who administers or causes to have administered any of the following tests shall report the results of each test to the Utah Department of Health or the local health department where the patient resides:

(a) CD4+ T-Lymphocyte tests; and

(b) HIV viral load determination;

(3)(a) A laboratory that analyzes samples for any of the tests listed in subsection (1) shall report all positive results to the Utah Department of Health or the local health department where the patient resides, except that it need not report patient name if it does not have the name.

(b) A laboratory that analyzes samples for any of the tests listed in subsection (2) shall report all results to the Utah Department of Health or the local health department where the patient resides, except that it need not report patient name if it does not have the name.

(4) Reports shall include:

(a) patient name, if available;

(b) patient number, if the name is not available;

(c) date of birth;

(d) date of test administration;

(e) test result; and

(f) name of the health care provider who ordered the test.

(5) Reports may be made in writing, by telephone, or by other electronic means acceptable to the Department.

**R388-803-3. Exemptions for Reporting of HIV Infection, AIDS and Related Tests.**

(1) A university or hospital that conducts research studies exempt from reporting AIDS and HIV infection under Section 26-6-3.5 shall submit the following to the Department:

(a) a summary of the research protocol;

(b) written approval of the institutional review board; and

(c) a letter showing funding sources and the justification for requiring anonymity.

(2) The university or hospital shall provide the Department a quarterly report indicating the number of HIV infected individuals enrolled in the study.

**R388-803-4. Partner Identification and Notification.**

(1) "Partner" is defined as any individual, including a spouse, who has shared needles, syringes, or drug paraphernalia or who has had sexual contact with an HIV infected individual. "Spouse" is defined as any individual who is the marriage partner of that person at any time within the ten-year period prior to the diagnosis of HIV infection.

(2) If an individual is tested and found to have an HIV infection, the Utah Department of Health or local health department shall conduct partner notification activities.

**KEY: HIV/AIDS, reporting, spousal notification**
**October 19, 1999 26-6-3**
**Notice of Continuation September 9, 1997**

**R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.**
**R388-804. Tuberculosis Control Rule.**
**R388-804-1. Special Measures for the Control of Tuberculosis.**

1. Definitions.

1.1. Communicable Tuberculosis. A person is considered to have communicable tuberculosis when any of the following conditions are known to exist:

1.1.1. The diagnosis of pulmonary tuberculosis has been established by the demonstration of M. tuberculosis in sputum, gastric washings, bronchial washing or pulmonary tissue by culture as specified in R388-804-1(1.2).

1.1.2. When a positive smear for acid-fast-bacilli has been demonstrated in body tissues or secretion and clinical findings are consistent with the diagnosis of tuberculosis until the time that the patient's physician presents evidence acceptable to the Utah Department of Health that no growth was obtained by culture of the specimen which was positive on the smear or that the organisms cultured are mycobacteria other than M. tuberculosis.

1.1.3. A chest x-ray shows changes characteristic of tuberculosis until proven not be tuberculosis by a negative tuberculin test or by bacteriologic or other appropriate studies. It is recommended that at least six sputa, or six gastrics be negative on smear and culture to rule out current disease.

1.1.4. Anti-tuberculosis drugs are being administered and the patient has not yet achieved bacteriologic negativity as defined in R388-804-1(1.4).

1.1.5. Anti-tuberculosis drugs have been discontinued or taken irregularly during the prescribed period of therapy for current disease.

1.2. Diagnosis. Examination of body tissue or secretions by a laboratory approved by the Utah Department of Health is required by microscopy and culture to establish or rule out the diagnosis of tuberculosis. It is recommended that at least six sputa or gastrics, or urine be negative for M. tuberculosis to rule out active disease. The growth of a single colony of M. tuberculosis is diagnostic.

1.2.1. A 14 inch by 17 inch chest x-ray is required if a tuberculin test is significant.

1.3. Successful Attainment of Bacteriological Negativity. Bacteriologic negativity may be said to have been achieved when three specimens collected as outlined above, R388-804-1, on separate days, preferably consecutive days, are negative by smear and culture for M. tuberculosis, followed in one month by three additional similarly collected specimens which are also negative by smear and culture for M. tuberculosis.

1.4. Attainment of Noninfectious Status. An individual shall be considered noninfectious to the public at large when, following progressive decreases in the number of acid-fast organisms in appropriately collected sputum smears, three consecutive negative smears of sputum are obtained, preferably on three consecutive days.

1.4.1. Extrapulmonary tuberculosis is generally considered noninfectious to the general public if contaminated drainage is appropriately handled and proper chemotherapy is being given.

1.4.2. Hospitalized patients with pulmonary tuberculosis shall remain segregated until noninfectious.

1.5. Tuberculin Skin Testing. The standard technique, Mantoux, is the intracutaneous injection of 0.1 ml of purified protein derivative (PPD) tuberculin containing 5 TU into the skin, usually in the volar or dorsal surface of the forearm.

1.6. Significant Tuberculin Reaction. A five m.m. or more induration of five TU's, intermediate strength, PPD is significant for contacts of cases and for reactors under six years of age. However, a 10 m.m. reaction is considered significant in all others. Reactions shall be recorded in m.m. of induration and then interpreted by size and circumstances.

2. Classification of Tuberculosis.

2.1. Class O: No tuberculosis exposure, not infected. No history of exposure, reaction to tuberculin skin test not significant.

2.2. Class I: Tuberculosis exposure, no evidence of infection. History of exposure, reaction to tuberculin skin test not significant.

2.3. Class II: Tuberculosis infection, no disease, significant reaction to tuberculin skin test, negative bacteriologic studies, if done. No clinical or roentgenographic evidence of tuberculosis.

2.4. Class III: Tuberculosis: current disease, M. tuberculosis cultured, if done, otherwise, both a significant reaction to tuberculin skin test and clinical or roentgenographic evidence of current disease.

2.5. Class IV: Tuberculosis: no current disease, history of previous episode or episodes of tuberculosis, or abnormal stable roentgenographic findings in a person with a significant reaction to tuberculin skin test, negative bacteriologic studies, if done, no clinical or roentgenographic evidence of current disease.

2.6. Class V: Tuberculosis suspect, diagnosis pending.

3. Isolation.

3.1. Isolation of patients with communicable or suspected communicable pulmonary tuberculosis is required.

4. Concurrent Disinfection.

4.1. No special requirement other than adequate ventilation. Ordinary hygienic precautions suffice when patient is on specific therapy. Terminal cleaning as usual.

5. Epidemiological Investigations.

5.1. Epidemiological investigation is required. All household and other close contacts shall be tuberculin tested. Contacts with tuberculin reactions less than five m.m. induration shall be retested in 8-12 weeks. Contacts with tuberculin reactions of five m.m. induration or more shall be referred for complete examination and x-rays.

6. Tuberculin Skin Testing of High Risk Groups.

6.1. Individuals at high risk for tuberculosis including contacts of cases, all newly employed personnel in schools, nursing homes, day care facilities, and medical care institutions, individuals relocating in the state from outside the United States, and new school entrants from outside the state shall receive appropriate tuberculin skin testing and follow-up.

7. Employee Skin Testing.

7.1. Tuberculin testing of all newly employed adult school personnel, day care center personnel and personnel in medical care institutions and nursing homes shall be required within two weeks of beginning of employment unless the employee is known to have had a previous significant tuberculin test. It is

the responsibility of said institutions to conduct a tuberculin testing program and to report findings of significant tests to the local health department.

7.2. If the tuberculin test is not significant, the employee shall be released from further routine tuberculin testing unless he has frequent or periodic close exposure to persons with communicable pulmonary tuberculosis.

7.3. If the tuberculin test is significant or if the employee has a known significant tuberculin test and has not had adequate chemotherapy, he shall be required to have a chest x-ray and an evaluation to ascertain whether or not any of the following conditions are present: evidence of current or inadequately treated healed tuberculosis disease, history of close exposure to a case of communicable pulmonary tuberculosis within the previous two years, history of a negative tuberculin test within the previous two years, diabetes mellitus which is severe or poorly controlled, disease associated with severe immunologic deficiencies such as cancer, reticuloendothelial disease, or immunosuppressive therapy with corticosteroids, ACTH, or cytotoxins; silicosis; gastrectomy or excessive alcohol intake. The chest x-ray and evaluation are required within five weeks following the report that he has a significant tuberculin test. If any of the above listed conditions, except current disease, are present, the employee is to be counseled that he is at relatively high risk of developing tuberculosis disease and that he should complete one year of Isoniazid chemoprophylaxis, unless medically contraindicated. If the employee has current disease, he must complete a recommended course of chemotherapy with at least two antituberculosis drugs.

7.3.1. Employees with significant tuberculin tests, with any of the above listed conditions who complete one year of Isoniazid chemoprophylaxis, or adequate antituberculosis chemotherapy if indicated, shall be released from further routine tuberculosis surveillance activities.

7.3.2. Employees, whose skin tests convert from not significant to significant or who have any of the above listed conditions, who do not complete a one year course of chemoprophylaxis shall receive annual chest x-rays for a period of three years.

7.3.3. Employees with significant tuberculin tests, with none of the above listed conditions or without a history of close exposure to a case of current pulmonary tuberculosis within the previous three years shall be released from further routine tuberculosis surveillance activities following completion of one year of Isoniazid chemoprophylaxis or following a negative chest x-ray twelve months after the initial x-ray.

7.4. Employees, who do not have significant tuberculin tests, having potential frequent or periodic close exposure to persons with active pulmonary tuberculosis or laboratory specimens from cases shall have periodic tuberculin tests at intervals specified by the institution's infection control committee. Employees developing significant tuberculin tests shall be required to have chest x-ray, medical evaluation and follow-up as described in R388-804-1-7(3.1), 7(3.2), and 7(3.3).

7.5. A contact investigation is required among the employees of schools, day care centers, health care institutions, and nursing homes when they are exposed to a case of communicable tuberculosis.

8. New School Entrant Skin Testing.

8.1. Tuberculin testing of all new school entrants in grades kindergarten through 12, vocational schools, colleges, and universities, from states, countries, territories, or Indian reservations with case rates higher than 15 per 100,000, shall be required within 30 days of school enrollment unless the student is known to have had a previous significant tuberculin test. It shall be the responsibility of said institutions to institute and conduct a tuberculin testing program and to report findings of significant tests to the local health department.

8.2. If the tuberculin test is not significant, the student shall be released from further routine tuberculin testing unless he has frequent or periodic close exposure to persons with communicable pulmonary tuberculosis.

8.3. If the tuberculin test is significant or if the student has a known significant tuberculin test and has not had adequate chemotherapy, he shall be required to have a chest x-ray and an evaluation to ascertain whether or not any of the following conditions are present: evidence of current or inadequately treated healed tuberculosis disease, history of close exposure to a case of communicable pulmonary tuberculosis within the previous two years, severe or poorly controlled diabetes mellitus, disease associated with severe immunologic deficiencies, such as cancer, reticuloendothelial disease, or immunosuppressive therapy with corticosteroids, ACTH, or cytotoxins; silicosis; gastrectomy or excessive alcohol intake.

8.4. The chest x-ray and evaluation shall be required within five weeks following the report of a significant tuberculin test. If any of the above listed conditions, except current disease, are present, the student and parents are to be counseled that the student is at relatively high risk of developing tuberculosis disease and that he must complete one year of Isoniazid chemoprophylaxis, unless medically contraindicated. If the student has current disease, he must complete a recommended course of chemotherapy with at least two antituberculosis drugs.

8.5. Students with significant tuberculin tests, with none of the above listed conditions or without a history of close exposure to a case of active pulmonary tuberculosis within the previous three years are released from further routine tuberculosis surveillance activities following completion of one year of Isoniazid chemoprophylaxis.

9. Contact Investigation.

9.1. For each case of current tuberculosis disease, an individual assessment shall be made, based on the susceptibility of those exposed and the infectiousness of the source case, as to how extensive the contact investigation should be. All members of the patient's household and close contact shall be examined in all cases. Once those persons who may be considered contacts to a case of current disease have been identified, they shall be examined within fourteen days of being identified. The required examinations are as follows:

9.1.1. Tuberculin skin test using five TU's of standardized PPD by the Mantoux technique, for all identified contacts. Five m.m. and larger reactions shall be considered significant in close contacts and children under six years of age.

9.1.2. Chest x-ray for all those whose tuberculin tests are significant.

9.1.3. Sputum examinations for all those with any chest x-ray findings suggestive of tuberculosis.

9.1.4. Repeat tuberculin skin test in eight to 12 weeks for all those whose tuberculin tests are not significant, less than five m.m. induration, on initial examination.

9.1.5. Follow-up on all those whose tuberculin tests convert from not significant to significant as above.

10. Treatment for Contacts.

10.1. Isoniazid (INH), in a single daily dose of 10 mg per kg of body weight per day for children, not to exceed 300 mg daily, and 300 mg per day for adults, is the recommended drug. Pyridoxine (Vitamin B-6) in a dose of 50 mg per day, to prevent peripheral neuropathy due to INH, should be given to patients with neurologic disorders or propensity toward neuropathy, such as diabetics and alcoholics. This is usually unnecessary for children and healthy adults. Preventive treatment is strongly recommended for the following:

10.1.1. All household and other close contacts under 35 years of age, with either a significant or not significant tuberculin test, to a case of tuberculosis, current disease. Isoniazid may be discontinued if, after three months, the tuberculin skin test is not significant.

10.1.2. All contacts whose tuberculin test convert from not significant to significant on re-examination whether in or out of the household.

10.1.3. All household and nonhousehold contacts whose tuberculin tests are initially significant except for those beyond the age of 35 in which case the risk of INH toxicity must be weighed against the risk of developing tuberculosis.

11. Isolation of Tuberculosis Patient in General Hospital.

11.1. The communicability of tuberculosis is principally due to droplet nuclei which contain viable Mycobacterium tuberculosis arising from a cough, sneeze, or laugh. The nuclei may remain suspended in the air for hours. Isolation measures shall be established for the preventing of formation, spread, and inhalation of droplet nuclei.

12. Most Contagious Patients.

12.1. Patients with numerous acid-fast-bacilli on a sputum smear, especially those patients suspected or known to have laryngeal tuberculosis, tracheal tuberculosis, or cavitary disease of the lungs are exceedingly effective at transmitting the disease.

12.2. Contagious patients shall be isolated in a private room with air exhausted to the outside through an individual room exhaust fan or a central exhaust system, usually by a lavatory exhaust.

12.3. Masks which will filter out particles as small as one micron shall be worn by the most contagious patients when out of the room; masks shall also be worn by visitors and by personnel while providing patient care until the patient has been on effective therapy for two weeks. The mask must be a type which is effective in filtering tuberculosis organisms, and is similar to the fiberglass masks made by Johnson and Johnson and 3M.

12.4. No special precautions need be taken for dishes, books, linens, furniture or floors.

12.5. Effective therapy shall be instituted as soon as presumptive diagnosis of tuberculosis is made.

12.6. Isolation in the hospital shall be continued until three appropriately collected consecutive sputum smears on separate days are negative.

12.7. It is mandatory that predischarge planning with the local health jurisdiction or Utah Department of Health shall be made to ensure adequate isolation, continuity of drug therapy, health care and public health nursing follow-up in the community.

12.8. Because of previously unrecognized cases of tuberculosis constitute the greatest source of infection, all hospital admissions who are suspected of having active tuberculosis shall be evaluated by a chest x-ray and other appropriate tests.

13. Moderately Contagious Patients.

13.1. The patient who has infiltrates in the lungs characteristic of tuberculosis or who has rare to few bacilli on one or more sputum smears is at moderate risk of transmitting the disease and must be isolated the same as a patient at high risk except that, if the patient is cooperative and complies with treatment recommendations and infection control guidelines, a mask need not be worn by the patient when having visitors or by individuals visiting or providing care for the patient. The uncooperative patient shall be isolated as if a highly contagious patient.

14. Minimally Contagious Patients.

14.1. The patient who has infiltrates in the lungs characteristic of tuberculosis but has three successive negative sputum smears is at minimal risk of transmitting the disease. He need not be isolated but he shall sleep in a private room with nonrecirculating air.

15. Elective Surgery.

15.1. Elective surgery should not be performed until the patient with current disease has responded to chemotherapy by having three negative smears. For emergency surgery in patients with a positive sputum, use a disposable unit in a closed anesthesia system or sterilize the inner parts of the equipment which were in contact with the patient's breath.

16. Retreatment.

16.1. Patients admitted for retreatment of pulmonary tuberculosis frequently have drug resistant organisms and shall be isolated as a highly contagious patient.

17. Extrapulmonary Tuberculosis.

17.1. Patients with extrapulmonary tuberculosis with no evidence of a pulmonary component need have no special precautions taken.

**KEY: communicable diseases, tuberculosis*, rules and procedures**
**1992 26-6-3**
**Notice of Continuation September 9, 1997**

**R398. Health, Community and Family Health Services, Children with Special Health Care Needs.**

**R398-1. Newborn Screening.**

**R398-1-1. Purpose and Authority.**

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of mental retardation in infants with certain metabolic disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Section 26-10-6.

**R398-1-2. Definitions.**

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening Kit form which conforms with the criteria in R398-1-8.

(3) "Congenital Hypothyroidism" means a disorder in which the newborn is unable to secrete or produce thyroxine normally.

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inconclusive result, inadequate specimen or a QNS specimen through to a normal result or confirmed diagnosis and referral.

(6) "Galactosemia" means a recessively inherited genetic disorder in which the individual is completely or partially incapable of normal metabolism of galactose due to a deficiency of the galactose-1-phosphate uridyltransferase enzyme.

(7) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(8) "Inconclusive result" means a specimen that has no growth on the Gutherie inhibition test for phenylketonuria.

(9) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah which provides maternity or nursery services or both.

(10) "Metabolic diseases" means those diseases due to an inborn error of metabolism, for which the Department of Health shall screen all infants.

(11) "Newborn Screening Kit" means the department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Phenylketonuria" means a recessively inherited genetic disorder in which the individual is completely or partially incapable of normal metabolism of phenylalanine due to a deficiency of the phenylalanine hydroxylase enzyme.

(13) "Practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the health care of a newborn.

(14) "QNS specimen" means a specimen that has been partially tested but requires more blood to complete the full testing.

**R398-1-3. Implementation.**

Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R398-1-11.

**R398-1-4. Responsibility for Collection of the First Specimen.**

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless transferred to another institution prior to 48 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

**R398-1-5. Timing of Collection of First Specimen.**

The first specimen shall be collected between 48 hours and five days of age. Except:

(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for phenylketonuria and congenital hypothyroidism;

(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for galactosemia.

**R398-1-6. Parent Education.**

The person who has responsibility under Section R398-1-4 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening Kit to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

**R398-1-7. The Second Specimen.**

A second specimen shall be collected between 7 and 28 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate specimen through an institution, practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 48 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate specimen.

**R398-1-8. Criteria for Appropriate Specimen.**

(1) The institution or practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening Kit purchased from the department. The fee for the kit is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening Kit;

(c) Not use the Newborn Screening Kit beyond the date of expiration;

(d) Not alter the Newborn Screening Kit in any way;

(e) Complete all information on the Newborn Screening Kit. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;

(f) Apply sufficient blood to the filter paper;

(g) Not contaminate the filter paper with any foreign substance;

(h) Not tear, perforate, scratch, or wrinkle the filter paper;

(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;

(j) Apply blood to the filter paper in a manner that does not cause caking;

(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn Screening Kit.

(2) Submit the completed Newborn Screening Kit to the Utah Department of Health, Newborn Screening Laboratory, 46 North Medical Drive, Salt Lake City, Utah 84113.

(a) The Newborn Screening Kit shall be placed in an envelope large enough to accommodate it without folding the kit.

(b) If mailed, the Newborn Screening Kit shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening Kit shall be delivered within 48 hours of the time the appropriate specimen was collected.

**R398-1-9. Abnormal Result.**

(1) If the department finds an abnormal result, the department shall inform the practitioner noted on the screening specimen form.

(2) The practitioner shall submit an appropriate specimen in accordance with Section R398-1-8. The specimen shall be collected and submitted within two days of notice, and the form shall be labeled for testing as directed by the department.

(3) The parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the practitioner to have an appropriate specimen collected.

(4) The department shall notify the practitioner of the test result. If the result is abnormal:

(a) The practitioner shall refer the newborn and family to the Newborn Screening Program within the department for confirmatory diagnostic services for phenylketonuria or galactosemia. The department shall pay for the diagnostic laboratory work that it orders.

(b) The department shall notify the practitioner of the need for confirmatory diagnostic services for congenital hypothyroidism. The department shall pay for the diagnostic laboratory work at a laboratory directed by the department.

(c) The practitioner shall complete a diagnostic form and return it to the department within 30 days.

**R398-1-10. Inconclusive Result, Inadequate Specimen, or QNS Specimen.**

(1) If the department finds an inconclusive result, inadequate specimen, or QNS specimen, the department shall inform the practitioner noted on the screening specimen form.

(2) The practitioner shall submit an appropriate specimen in accordance with Section R398-1-8. The specimen shall be collected and submitted within two days of notice, and the form shall be labeled for testing as directed by the department.

(3) The parent or legal guardian of a newborn identified with an inconclusive result, inadequate specimen or QNS specimen shall promptly take the newborn to the practitioner to have an appropriate specimen collected.

**R398-1-11. Testing Refusal.**

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and signed waiver by a parent or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Family Health Services, Newborn Screening Program, P.O. Box 144660, Salt Lake City, UT 84114-4660.

**R398-1-12. Access to Medical Records.**

The department shall have access to the medical records of a newborn in order to identify practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

**R398-1-13. Noncompliance by Parent or Legal Guardian.**

If the practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the practitioner or institution shall report such noncompliance as medical neglect to the department.

**R398-1-14. Test Changes.**

The department, after consulting with the Genetic Advisory Committee, may make additions or changes to the Newborn Screening battery of tests.

**KEY: health care, newborn screening**

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| **1994** | **26-1-6** |
| **Notice of Continuation October 12, 1999** | **26-10-6** |

**R426. Health, Health Systems Improvement, Emergency Medical Services.**

**R426-6. Emergency Medical Services Grants Program Rules.**

**R426-6-1. Authority and Purpose.**

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide guidelines for the equitable distribution of grant funds specified under the Emergency Medical Services Grants Program.

**R426-6-2. 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. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(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. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

**R426-6-3. Eligibility.**

Grantees shall be limited to agencies or political subdivisions of local or state government or incorporated non-profit entities.

**R426-6-4. Grant Implementation.**

In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.

(1) Grant awards are effective on July 1 and must be used by June 30 of the following year.

(2) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

**R426-6-5. Competitive Grant Process.**

(1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.

(2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.

(3) It is the intent of the EMS Committee that there be local EMS council or committee review and prioritization of grant applications. Therefore, copies of grant applications shall be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for a period of at least 30 days for review and prioritization before consideration by the State Grants Review subcommittee. State reviews may not be conducted for grant proposals which have not been first submitted to the county or the multi-county EMS councils or committees.

(4) State or non-profit agencies whose service area includes multiple local EMS Committee jurisdictions shall bypass county and multi-county reviews.

(5) The Grants Review Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Review Subcommittee recommendations and forward to the Department.

(6) Grant recipients shall provide matching funds in the amount of 50% of total approved expenditures or a greater amount as annually set forth in the Grant Guidelines.

(7) The Grants Review Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS problems.

(8) The Grants Review Subcommittee shall make recommendations based upon the following criteria:

(a) the impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county prioritization;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.

(9) Applications requesting grant award extensions past June 30, must be made to the department by May 30 of the grant year. Requests made after that time will not be accepted. Grants extensions may only be given for unforeseen circumstances.

**R426-6-6. Per Capita Grant Process.**

(1) Agency applicants shall verify agency personnel rosters as part of the grant application process.

(2) The department shall determine the amounts of the per capita grants by prorating available funds on a per capita basis by county.

(3) The Department shall allocate funds to licensed EMS providers, designated dispatch agencies and designated first response units by using the following point totals for their personnel: certified Dispatchers, Basic EMTs, EMT-IVs = 1; certified Intermediate EMTs = 2; and certified Paramedics = 3. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated dispatch agency and designated first response unit as of January 1 immediately prior to the grant year, which begins July 1.

(4) No matching funds are required for per capita grants.

(5) Grant awards are effective on July 1 and must be used

by June 30 of the following year. No extensions will be given.

(6) Per capita funds may be used as matching funds for competitive grants.

**R426-6-7. High School Training Program Grant.**

(1) The department shall provide a grant by contract with a single non-profit entity for the purpose of teaching the "What To Do Until the Ambulance Arrives" program or a similar program to Utah high school students. Any change to the curriculum of the program must be approved by the Department and the Utah State Board of Education. These programs are limited to Utah high schools for Utah high school students.

(2) The contract will be effective from July 1 through June 30. Contract awards may not be extended or amended.

**R426-6-8. Interim or Emergency Grant Awards.**

(1) The Grants Review Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants Review Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Review Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Review Subcommittee recommendations and forward to the Department.

**KEY: emergency medical services**
**May 14, 1999** **26-8a**
**Notice of Continuation December 2, 1997**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**
**R426-11. Definitions and Quality Assurance Reviews.**
**R426-11-1. Authority and Purpose.**

This rule establishes uniform definitions for all R426 rules. It also provides administration standards applicable to all R426 rules.

**R426-11-2. General Definitions.**

The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule, in addition:

(1) "Air Ambulance" means any privately or publicly owned air vehicle specifically designed, constructed, or modified, which is intended to be used for and is maintained or equipped with the intent to be used for, maintained or operated for the transportation of individuals who are sick, injured, or otherwise incapacitated or helpless.

(2) "Air medical personnel" means the pilot and patient care personnel who are involved in an air medical transport.

(3) "Air Medical Service" means any publicly or privately owned organization that is licensed or applies for licensure under R426-2.

(4) "Air Medical Service Medical Director" means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(5) "Air Medical Transport Service" means the transportation and care of patients by air ambulance.

(6) "CAMTS" is the acronym for the Commission on Accreditation of Medical Transport Systems, which is a non-profit organization dedicated to improving the quality of air medical services.

(7) "Categorization" means the process of identifying and developing a stratified profile of Utah hospital trauma critical care capabilities in relation to the standards defined under R426-5-7.

(8) "Certify," "Certification," and "Certified" mean the official Department recognition that an individual has completed a specific level of training and has the minimum skills required to provide emergency medical care at the level for which he is certified.

(9) "Committee" or "EMS Committee" means the State Emergency Medical Services Committee created by Section 26-11-7.

(10) "Competitive grant" means a grant awarded through the Emergency Medical Services Grants Program on a competitive basis for a share of available funds.

(11) "Continuing Medical Education" means Department-approved training relating specifically to the appropriate level of certification designed to maintain or enhance an individual's emergency medical skills.

(12) "Course Coordinator" means an individual who has completed a Department course coordinator course and is certified by the Department as capable to conduct Department-authorized EMS courses.

(13) "Department" means the Utah Department of Health.

(14) "Emergency Medical Dispatcher" or "EMD" means an individual who has completed an EMD training program, approved by the Bureau, who is certified by the Department as qualified to render services enumerated in this rule.

(15) "Emergency Medical Dispatch Center" means an agency designated by the Department for the routine acceptance of calls for emergency medical assistance from the public, utilizing a selective medical dispatch system to dispatch licensed ambulance, and paramedic services.

(16) "EMS" means emergency medical services.

(17) "Field EMS Personnel" means a certified individual or individuals who are on-scene providing direct care to a patient.

(18) Grants Review Subcommittee means a subcommittee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

(19) "Inclusive Trauma System means the coordinated component of the State emergency medical services (EMS) system composed of all general acute hospitals licensed under Title 26, Chapter 21, trauma centers, and prehospital providers which have established communication linkages and triage protocols to provide for the effective management, transport and care of all injured patients from initial injury to complete rehabilitation.

(19) "Individual" means a human being.

(20) "EMS Instructor" means an individual who has completed a Department EMS instructor course and is certified by the Department as capable to teach EMS personnel.

(21) "Level of Care" means the capabilities and commitment to the care of the trauma patient available within a specified facility.

(22) "Matching Funds" means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(23) "Medical Control" means a person who provides medical supervision to an EMS provider as either:

(a) on-line medical control which refers to physician medical direction of prehospital personnel during a medical emergency; and

(b) off-line medical control which refers to physician oversight of local EMS services and personnel to assure their medical accountability.

(24) "Medical Director" means a physician certified by the Department to provide off-line medical control.

(25) "Net Income" - The sum of net service revenue, plus other operating revenue and subsidies of any type, less operating expenses, interest expense, and income.

(26) "Paramedic Rescue Service" means the provision of rescue, extrication and patient care by paramedic personnel, without actual transporting capabilities.

(27) "Paramedic Rescue Unit" means a vehicle which is properly equipped, maintained and used to transport paramedics to the scene of emergencies to perform paramedic rescue services.

(28) "Paramedic Tactical Rescue Service" means the retrieval and field treatment of injured peace officers or victims of traumatic confrontations by paramedics who are trained in combat medical response.

(29) "Paramedic Tactical Rescue Unit" means a vehicle which is properly equipped, maintained and used to transport

paramedics to the scene of traumatic confrontations to provide paramedic tactical rescue services.

(30) "Patient" means an individual who, as the result of illness or injury, meets any of the criteria in Section 26-8a-305.

(31) "Per Capita grants" mean block grants determined by prorating available funds on a per capita basis as delineated in 26-8a-207, as part of the Emergency Medical Services Grants Program.

(32) "Permit" means the document issued by the Department that authorizes a vehicle to be used in providing emergency medical services.

(33) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency or organization of any kind, public or private.

(34) "Physician" means a medical doctor licensed to practice medicine in Utah.

(35) "Pilot" means any individual licensed under Federal Aviation Regulations, Part 135.

(36) "Primary emergency medical services" means a for-profit organization that is the only licensed or designated service in a geographical area.

(37) "Quick Response Unit" means an organization that provides emergency medical services to supplement local ambulance services or provide unique services such as search and rescue and ski patrol.

(38) "Resource Hospital" means a facility designated by the EMS Committee to provide on-line medical control for the provision of prehospital emergency care.

(39) "Selective Medical Dispatch System" means a department-approved reference system used by a local dispatch agency to dispatch aid to medical emergencies which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(40) "Specialized Life Support Air Medical Service" means a level of care which requires equipment or speciality patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

(41) "Training Officer" means an individual who has completed a department Training Officer Course and is certified by the Department to be responsible for an EMS provider organization's continuing medical education, recertification records, and testing.

**R426-11-3. Quality Assurance Reviews.**

(1) The Department may conduct quality assurance reviews of licensed and designated organizations and training programs on an annual basis or more frequently as necessary to enforce this rule;

(2) The Department shall conduct a quality assurance review prior to issuing a new license or designation.

(3) The Department may conduct quality assurance reviews on all personnel, vehicles, facilities, communications, equipment, documents, records, methods, procedures, materials and all other attributes or characteristics of the organization, which may include audits, surveys, and other activities as necessary for the enforcement of the Emergency Medical Services System Act and the rules promulgated pursuant to it.

(a) The Department shall record its findings and provide the organization with a copy.

(b) The organization must correct all deficiencies within 30 days of receipt of the Department's findings.

(c) The organization shall immediately notify the Department on a Department-approved form when the deficiencies have been corrected.

**KEY: emergency medical services**
**October 1, 1999 26-8a**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**

**R426-12. Emergency Medical Services Training and Certification Standards.**

**R426-12-100. Authority and Purpose.**

This Rule is established under Title 26, Chapter 8a to provide uniform minimum standards to be met by those providing emergency medical services in the State of Utah; and for the training, certification, and recertification of individuals who provide emergency medical service and for those providing instructions and training to prehospital emergency medical care providers.

**R426-12-101. Written and Practical Test Requirements.**

(1) The Department shall:

(a) develop written and practical tests for each certification; and

(b) establish the passing score for certification written and practical tests.

(2) The Department may administer the tests or delegate the administration of any test to another entity.

**R426-12-102. Emergency Medical Care During Clinical Training.**

A student enrolled in a department approved training program may, under the direct supervision of the course coordinator, an instructor in the course, or a preceptor for the course perform activities delineated within the training curriculum that otherwise require the certification to perform those activities.

**R426-12-103. Temporary Certification for 2002 Winter Olympics.**

(1) The Department may issue temporary certifications, valid from January 1 to March 20, 2002, to individuals to work or volunteer with the Salt Lake Organizing Committee or a specific EMS provider organization that provides EMS services for the 2002 Winter Olympics or Paralympics.

(2) An individual certified and in good standing in another state, seeking Utah certification during the 2002 Winter Olympics or Paralympics under this section must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to a background investigation; and

(c) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent.

**R426-12-200. EMT-B Requirements and Scope of Practice.**

(1) The Department may certify as an EMT-Basic (EMT-B) an individual who meets the initial certification requirements in R426-12-201.

(2) The Committee adopts the 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum" as the standard for EMT-B training and competency in the state, which is adopted and incorporated by reference.

(3) An EMT-B may perform the skills described in the EMT-Basic Training Program: National Standard Curriculum.

**R426-12-201. EMT-B Initial Certification.**

(1) The Department may certify an EMT-B for a four year period.

(2) An individual who wishes to become certified as an EMT-B must:

(a) successfully complete a Department-approved EMT-B course;

(b) be able to perform functions listed in the EMT-Basic Training Program: National Standard Curriculum as verified by personal attestation and successful accomplishment during the course of all cognitive skills and objectives and all psychomotor skills and objectives listed in the curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-B certification;

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to a background investigation;

(g) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMT-B course; and

(h) within 90 days after completing the EMT-B course, successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(h) for an individual who demonstrates that the inability to meet the requirements within the 90 days was due to circumstances beyond his control.

**R426-12-202. EMT-B Certification Challenges.**

(1) The Department may certify as an EMT-B a registered nurse licensed in Utah, physician assistant licensed in Utah, and physician licensed in Utah who:

(a) is able to demonstrate proficiency and competence to perform the functions listed in the EMT-Basic Training Program: National Standard Curriculum as verified by personal attestation and successful demonstration to a course coordinator and an off-line medical director of all cognitive skills and objectives and all psychomotor skills and objectives listed in the curriculum;

(b) has a knowledge of:

(i) medical control protocols;

(ii) state and local protocols;

(iii) the role and responsibilities of an EMT-B;

(c) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent; and

(d) is 18 years of age or older.

(2) To become certified, the applicant must:

(a) submit three letters of recommendation from health care providers attesting to the applicant's patient care skills and abilities;

(b) submit an application, including documentation of compliance with this section, and pay all required fees;

(c) within 90 days after submitting the challenge application, successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary;

(d) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(e) submit to a background investigation; and

(f) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to submitting the application.

**R426-12-203. EMT-B Reciprocity.**

(1) The Department may certify as an EMT-B an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience is equivalent to what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must submit the applicable fees and a completed application, including social security number and signature, to the Department and within one year of submitting the application must:

(a) submit to a background investigation;

(b) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(c) successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary;

(d) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent;

(e) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of training institution if registered with the National Registry of EMTs; and

(f) provide documentation of completion of 25 hours of continuing medical education within the prior year.

**R426-12-204. EMT-B Recertification Requirements.**

(1) The Department may recertify an EMT-B for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to a background investigation;

(c) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent;

(d) successfully complete the Department applicable written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration of the certification to be renewed; and

(e) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination.

**R426-12-205. EMT-B Lapsed Certification.**

(1) An individual whose EMT-B certification has expired for less than one year may, within one year after expiration, complete all recertification requirements and pay a lapsed fee to become certified.

(2) An individual whose certification has expired for more than one year must take an EMT-B course and reapply as if there were no prior certification.

**R426-12-206. EMT-B Testing Failures.**

(1) Except as provided in Subsection (2):

(a) An individual who fails any part of the EMT-B certification written or practical examination may retake the EMT-B examination once without further course work.

(b) If the individual fails on the re-examination, he must take a complete EMT-B training course to be eligible for further examination.

(c) The individual may retake the course as many times as he desires, but may only take the examinations twice for each completed course.

(2) An EMT-B who fails any part of the recertification written or practical examination may retake the examinations once without retaking the course. If the EMT-B fails on the reexaminations, he may:

(a) retake the course; or

(b) request a meeting with department staff to evaluate reasons for the failure and suggest methods for remediation.

(3) The Department may offer the examination one additional time if:

(a) the Department allows remediation;

(b) the Department determines that the individual would likely pass the examination after completion of any suggested remediation; and

(c) the EMT-B completes the remediation.

(4) If the Department does not allow the third examination, the EMT-B may seek review before the EMS Committee by filing a request for agency action within 30 days if issuance of the Department's determination.

**R426-12-300. EMT-B-IV Requirements and Scope of Practice.**

(1) The Department may certify an EMT-B as an EMT-Basic with IV capabilities (EMT-B-IV) who:

(a) meets the initial certification requirements in R426-12-301; and

(b) has 12 months of field experience as a certified EMT-B, six months of which may be waived upon a written request from the off-line medical director showing that there is a shortage of EMT-B-IVs to serve the area.

(2) The Committee adopts the affective, cognitive, and psychomotor objectives for IV therapy from the 1999 United States Department of Transportation's "Emergency Medical

Technician-Intermediate: National Standard Curriculum" as the standard for EMT-B-IV training and competency in the state, which is adopted and incorporated by reference.

(3) In addition to the skills that an EMT-B may perform, an EMT-B-IV may perform the IV skills described in the EMT-Intermediate Training Program: National Standard Curriculum.

**R426-12-301. EMT-B-IV Initial Certification.**

(1) The Department may certify an EMT-B-IV for a four year period. The expiration for the IV certification shall correlate with the expiration date for the EMT-B certification. If the EMT-B expiration date is less than one year after the date of the IV certification, the individual need not re-test for the IV module. Thereafter, recertification requirements must be completed every four years in conjunction with recertification as an EMT-B.

(2) An individual who wishes to become certified as an EMT-B-IV must:

(a) successfully complete a Department-approved EMT-B-IV course;

(b) be able to perform functions listed in the EMT-IV module of the Emergency Medical Technician-Intermediate: National Standard Curriculum as verified by personal attestation and successful accomplishment during the course of all cognitive skills and objectives and all psychomotor skills and objectives listed in the curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-B-IV certification; and

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to a background investigation;

(g) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMT-B-IV course; and

(h) within 90 days after completing the EMT-B-IV course, successfully complete the Department written and practical EMT-B-IV examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(h) for an individual who demonstrates that the inability to meet the requirements within the 90 days was due to circumstances beyond his control.

**R426-12-302. EMT-B-IV Reciprocity.**

(1) The Department may certify as an EMT-B-IV an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience is equivalent to what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must submit the applicable fees and a completed application, including social security number and signature, to the Department and within one year of submitting the application:

(a) submit to a background investigation;

(b) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(c) successfully complete the Department written and practical EMT-B-IV examinations, or reexaminations, if necessary;

(d) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent;

(e) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of training institution if registered with the National Registry of EMTs; and

(f) provide documentation of completion of 25 hours of continuing medical education within the prior year.

**R426-12-303. EMT-B-IV Recertification Requirements.**

(1) The Department may recertify an individual as an EMT-B-IV for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) complete all EMT-B recertification requirements;

(b) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(c) submit a letter from the off-line medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-B-IV skills:

(i) initiating and terminating intravenous infusion;

(ii) successful completion of the Department's pediatric vascular access skills station; and

(iii) insertion and removal of intraosseous needles; and

(d) successfully complete the Department's IV written recertification examination, or reexamination if necessary, within one year prior to expiration of the IV certification.

**R426-12-304. EMT-B-IV Lapsed Certification.**

(1) An individual whose EMT-B-IV certification has expired for less than one year, may, within one year after expiration, complete all recertification requirements and pay a lapsed fee to become certified.

(2) An individual whose EMT-B-IV certification has expired for more than one year must take retake the IV training and reapply as if there were no prior IV certification.

**R426-12-305. EMT-B-IV Testing Failures.**

(1) Except as provided in Subsection (2):

(a) An individual who fails any part of the EMT-B-IV certification written or practical examination may retake the EMT-B-IV examination once without further course work.

(b) If the individual fails on the re-examination, he must take a complete EMT-B-IV training course to be eligible for further examination.

(c) The individual may retake the course as many times as he desires, but may only take the examinations twice for each

completed course.

(2) An EMT-B-IV who fails any part of the recertification written or practical examination may retake the examinations once without retaking the course. If the EMT-B-IV fails on the reexaminations, he may:

(a) retake the course; or

(b) request a meeting with department staff to evaluate reasons for the failure and suggest methods for remediation.

(3) The Department may offer the examination one additional time if:

(a) the Department allows remediation;

(b) the Department determines that the individual would likely pass the examination after completion of any suggested remediation; and

(c) the EMT-B-IV completes the remediation.

(4) If the Department does not allow the third examination, the EMT-B-IV may seek review before the EMS Committee by filing a request for agency action within 30 days if issuance of the Department's determination.

**R426-12-400. EMT-I Requirements and Scope of Practice.**

(1) The Department may certify an individual as an EMT-Intermediate (EMT-I) who:

(a) meets the initial certification requirements in R426-12-401;

(b) is currently certified as an EMT-B or EMT-B-IV; and

(c) has 12 months of field experience as a certified EMT-B or EMT-B-IV; however, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the off-line medical director that there is a shortage of EMT-Is to serve the area.

(2) The Committee adopts the 1999 United States Department of Transportation's "EMT-Intermediate Training Program: National Standard Curriculum" as the standard for EMT-I training and competency in the state, which is adopted and incorporated by reference.

(3) An EMT-I may perform the skills described in the EMT-Intermediate Training Program: National Standard Curriculum.

**R426-12-401. EMT-I Initial Certification.**

(1) The Department may certify an EMT-I for a four year period.

(2) An individual who wishes to become certified as an EMT-I must:

(a) successfully complete a Department-approved EMT-I course;

(b) be able to perform functions listed in the EMT-Intermediate Training Program: National Standard Curriculum as verified by personal attestation and successful accomplishment during the course of all cognitive skills and objectives and all psychomotor skills and objectives listed in the curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for EMT-I certification; and

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to a background investigation;

(g) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the EMT-I course; and

(h) within 90 days after completing the EMT-I course, successfully complete the Department written and practical EMT-B examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(h) for an individual who demonstrates that the inability to meet the requirements within the 90 days was due to circumstances beyond his control.

**R426-12-402. EMT-I Reciprocity.**

(1) The Department may certify as an EMT-I an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience is equivalent to what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must submit the applicable fees and a completed application, including social security number and signature, to the Department and within one year of submitting the application:

(a) submit to a background investigation;

(b) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(c) successfully complete the Department written and practical EMT-I examinations, or reexaminations, if necessary;

(d) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent;

(e) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of training institution if registered with the National Registry of EMTs; and

(f) provide documentation of completion of 25 hours of continuing medical education within the prior year.

**R426-12-403. EMT-I Recertification Requirements.**

(1) The Department may recertify an individual as an EMT-I for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to a background investigation;

(c) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent;

(d) successfully complete the Department applicable

written and practical recertification examinations, or reexaminations if necessary, within one year prior to expiration of the certification to be renewed;

(e) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination;

(f) complete the specific recertification requirements for the certification level.

(g) complete a minimum of 25 hours of Department-approved continuing medical education in each of the prior four years and submit to the Department evidence of completion; and

(h) submit a letter from the off-line medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-I skills:

(i) initiating and terminating intravenous infusion;

(ii) completion of pediatric vascular access skills station;

(iii) insertion and removal of intraosseous needle;

(iv) insertion and removal of endotracheal tube;

(v) administration of medications via intramuscular, subcutaneous, and intravenous routes; and

(vi) EKG rhythm recognition.

**R426-12-404. EMT-I Lapsed Certification.**

(1) An individual whose EMT-I certification has expired for less than one year, may, within one year after expiration, complete all recertification requirements and pay a lapsed fee to become certified.

(2) An individual whose certification has expired for more than one year must take the EMT-B and EMT-I courses and reapply as if there were no prior certification.

**R426-12-405. EMT-I Testing Failures.**

(1) Except as provided in Subsection (2):

(a) An individual who fails any part of the EMT-I certification written or practical examination may retake the EMT-I examination once without further course work.

(b) If the individual fails on the re-examination, he must take a complete EMT-I training course to be eligible for further examination.

(c) The individual may retake the course as many times as he desires, but may only take the examinations twice for each completed course.

(2) An EMT-I who fails any part of the EMT-I recertification written or practical examination may retake the examinations once without retaking the course. If the EMT-I fails on the reexamination, he may:

(a) retake the course; or

(b) request a meeting with department staff to evaluate reasons for the failure and suggest methods for remediation.

(3) The Department may offer the examination one additional time if:

(a) the Department allows remediation;

(b) the Department determines that the individual would likely pass the examination after completion of any suggested remediation; and

(c) the EMT-I completes the remediation.

(4) If the Department does not allow the third examination, the EMT-I may seek review before the EMS Committee by filing a request for agency action within 30 days if issuance of the Department's determination.

**R426-12-500. Paramedic Requirements and Scope of Practice.**

(1) The Department may certify an individual as a paramedic who:

(a) meets the initial certification requirements in R426-12-501;

(b) has 12 months of field experience as a certified EMT-B, EMT-B-IV, or EMT-I; however, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the off-line medical director that there is a shortage of paramedics to serve the area.

(2) The Committee adopts the 1998 United States Department of Transportation's "EMT-Paramedic Training Program: National Standard Curriculum" as the standard for paramedic training and competency in the state, which is adopted and incorporated by reference.

(3) A paramedic may perform the skills described in the EMT-Paramedic: National Standard Curriculum.

**R426-12-501. Paramedic Initial Certification.**

(1) The Department may certify a paramedic for a four year period.

(2) An individual who wishes to become certified must:

(a) successfully complete a Department-approved paramedic course;

(b) be able to perform functions listed in the EMT-Paramedic Training Program: National Standard Curriculum as verified by personal attestation and successful accomplishment during the course of all cognitive skills and objectives and all psychomotor skills and objectives listed in the curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during field and clinical training and successful completion of all training requirements for paramedic certification;

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to a background investigation; and

(g) submit to the Department a statement from a physician, confirming the applicant's results of a TB examination conducted within one year prior to completing the paramedic course; and

(h) within 90 days after completing the paramedic course, successfully complete the Department written and practical paramedic examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(h) for an individual who demonstrates that the inability to meet the requirements within the 90 days was due to circumstances beyond his control.

**R426-12-502. Reciprocity.**

(1) The Department may certify as a paramedic an individual certified outside of the State of Utah if the applicant

can demonstrate the applicant's out-of-state training and experience is equivalent to what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must submit the applicable fees and a completed application, including social security number and signature, to the Department and within one year of submitting the application:

(a) submit to a background investigation;

(b) submit a statement from a physician, confirming the applicant's results of a TB examination conducted within the prior year;

(c) successfully complete the Department written and practical paramedic examinations, or reexaminations, if necessary;

(d) maintain and submit verification of current department-approved course completion in Adult and Pediatric Advanced Cardiac Life Support;

(e) submit a current certification from one of the states of the United States or its possessions, or current registration and the name of training institution if registered with the National Registry of EMTs; and

(f) provide documentation of completion of 25 hours of continuing medical education within the prior year.

**R426-12-503. Paramedic Recertification Requirements.**

(1) The Department may recertify a paramedic for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to a background investigation;

(c) successfully complete the applicable Department recertification examinations, or reexaminations if necessary, within one year prior to expiration of the certification to be renewed;

(d) submit a statement from the applicant's EMS provider organization or a physician, confirming the applicant's results of a TB examination;

(e) complete the specific recertification requirements for the certification level;

(f) complete a minimum of 25 hours of Department-approved continuing medical education in each of the prior four years and submit to the Department evidence of completion;

(g) maintain and submit verification of current department-approved course completion in Adult and Pediatric Advanced Cardiac Life Support; and

(h) submit an evaluation of clinical competency and a recommendation for recertification from an off-line medical director.

**R426-12-504. Paramedic Lapsed Certification.**

An individual whose paramedic certification has expired and who wishes to become certified as a paramedic may:

(1) submit a completed application, including social security number and signature to the department;

(2) submit to a background investigation;

(3) submit to the Department evidence of having completed 100 hours of Department-approved continuing medical education within the prior four years.

(4) submit a statement from a physician, confirming the applicant's results of a TB examination;

(5) submit verification of current completion of a department-approved course in adult and pediatric advanced life support;

(6) submit a letter of recommendation including results of an oral examination, from a certified off-line medical director, verifying proficiency in paramedic skills;

(7) successfully complete the applicable Department written and practical examinations.

(8) pay all applicable fees.

**R426-12-505. Paramedic Testing Failures.**

(1) If an individual fails the written or practical certification or recertification examination after two attempts, he may, within 30 days following notification in writing of this second failure, submit a written request to take the test a third time.

(2) Within thirty days of receipt of the request, the Department shall convene a review board consisting of:

(a) the chairman of the Paramedic Advisory Sub-Committee;

(b) the off-line medical director for the individual's EMS provider organization, if the individual is employed by or is associated with an EMS provider organization as an EMS personnel;

(c) a representative of the Department; and

(d) a representative from the entity that provided training, but if the training was not provided in-state, then a representative of an in-state training entity that provides paramedic training.

(3) The review board shall allow the individual to appear and provide information.

(4) The board shall review whether a program of re-education and reexamination within 30 days would likely result in successful completion of the examinations and shall recommend a course of action to the department.

(5) The Department shall consider the review board's recommendation and provide one opportunity for reexamination within 30 days of its decision if it determines that re-education and reexamination within that time would likely result in successful completion of the examinations.

**R426-12-600. Emergency Medical Dispatcher (EMD).**

(1) The Department may certify as an EMD an individual who meets the initial certification requirements in R426-12-601.

(2) The Committee adopts the 1995 United States Department of Transportation's "EMD Training Program: National Standard Curriculum" as the standard for EMD training and competency in the state, which is adopted and incorporated by reference.

**R426-12-601. EMD Initial Certification.**

(1) The Department may certify EMD for a four year period.

(2) An individual who wishes to become certified as an EMD must:

(a) successfully complete a Department-approved EMD course;

(b) be able to perform functions listed in the EMD Training Program: National Standard Curriculum as verified by personal attestation and successful accomplishment of all skills listed in the curriculum;

(c) achieve a favorable recommendation from the course coordinator and course medical director stating technical competence during training;

(d) be 18 years of age or older;

(e) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(f) submit to a background investigation; and

(g) within 90 days after completing the EMD course, successfully complete the Department written and practical EMD examinations, or reexaminations, if necessary.

(3) The Department may extend the time limit in Subsection (2)(h) for an individual who demonstrates that the inability to meet the requirements within the 90 days was due to circumstances beyond his control.

**R426-12-602. EMD Reciprocity.**

(1) The Department may certify as an EMD an individual certified outside of the State of Utah if the applicant can demonstrate the applicant's out-of-state training and experience is equivalent to what is required in Utah.

(2) An individual seeking reciprocity for certification in Utah based on out-of-state training and experience must submit the applicable fees and a completed application, including social security number and signature, to the Department and within one year of submitting the application:

(a) submit to a background investigation;

(b) successfully complete the Department written EMD examination, or reexamination, if necessary;

(c) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent;

(d) submit a current certification from one of the states of the United States or its possessions or the National Academy of EMDs; and

(e) provide documentation of completion of 12 hours of continuing medical education within the prior year.

**R426-12-603. EMD Recertification.**

(1) The Department may recertify an EMD for a four year period or for a shorter period as modified by the Department to standardize recertification cycles.

(2) An individual seeking recertification must:

(a) submit the applicable fees and a completed application, including social security number and signature, to the Department;

(b) submit to a background investigation;

(c) submit documentation of having completed a course in cardiopulmonary resuscitation offered by the National Safety Council, the American Red Cross, or the American Heart Association or a course that the applicant can demonstrate to the Department to be equivalent;

(d) submit to the Department evidence of having completed 12 hours of Department-approved continuing medical education in each of the previous four years; and

(e) successfully complete the Department EMD written recertification examination, or reexamination if necessary, within one year prior to expiration of the certification to be renewed

**R426-12-604. EMD Lapsed Certification.**

An EMD whose certification has expired must take the EMD course and reapply as if there were no prior certification.

**R426-12-605. EMD Testing Failures.**

An individual who fails any part of the EMD certification or recertification written examination, may retake the examination once without retaking the course. The individual may retake the course as many times as he desires, but may only take the examinations twice for each completed course.

**R426-12-700. Emergency Medical Services Instructor Requirements.**

(1) The Department may certify as an EMS Instructor an individual who:

(a) meets the initial certification requirements in R426-12-701; and

(b) has been certified for 12 months.

(2) The Committee adopts the 1995 United States Department of Transportation's "EMS Instructor Training Program: National Standard Curriculum" as the standard for EMS Instructor training and competency in the state, which is adopted and incorporated by reference.

(3) An EMS instructor may only teach up to the certification level to which the instructor is certified. An EMS instructor who is only certified as an EMD may only teach EMD courses.

(4) An EMS instructor must abide by the terms of the "EMS Instructor Contract," teach according to the contract, and comply with the teaching standards and procedures in the EMS Instructor Manual or EMD Instructor Manual as incorporated into the respective "EMS Instructor Contract" or "EMD Instructor Contract."

**R426-12-701. EMS Instructor Certification.**

(1) The Department may certify an individual who is an EMT-B, EMT-B-IV, EMT-I, paramedic, or EMD as an EMS Instructor for a two year period.

(2) An individual who wishes to become certified as an EMS Instructor must:

(b) submit an application and pay all applicable fees;

(c) submit three letters of recommendation regarding EMS skills and teaching abilities;

(d) submit documentation of 15 hours of teaching experience;

(e) successfully complete all required examinations; and

(f) submit annually a completed and signed "EMS Instructor Contract" to the department agreeing to abide by the standards and procedures in the then current EMS Instructor Manual or EMD Instructor Manual.

(3) An individual who wishes to become certified as an EMS Instructor to teach EMT-B, EMT-B-IV, EMT-I, or paramedic courses must also:

(a) provide documentation of 30 hours of patient care within the prior year;

(b) submit verification that the individual is recognized as a CPR instructor by the National Safety Council, the American Red Cross, or the American Heart Association; and

(c) successfully complete the department-sponsored initial EMS instructor training course.

(4) An individual who wishes to become certified as an EMS Instructor to teach EMD courses must also successfully complete the department-sponsored initial EMS instructor training course.

(5) The Department may waive portions of the initial EMS instructor training courses for previously completed department-approved instructor programs.

**R426-12-702. EMS Instructor Recertification.**

An EMS instructor who wishes to recertify as an instructor must:

(1) maintain current EMS certification;

(2) attend the required department-approved recertification training;

(3) submit verification of 30 hours of EMS teaching experience in the prior two years;

(4) if teaching an EMT-B, EMT-B-IV, EMT-I, or paramedic course, submit verification that the instructor is currently recognized as a CPR instructor by the National Safety Council, the American Red Cross, or the American Heart Association;

(5) submit an application and pay all applicable fees;

(6) successfully complete any Department-required examination; and

(7) submit annually a completed and signed "EMS Instructor Contract" to the department agreeing to abide by the standards and procedures in the then current EMS Instructor Manual.

**R426-12-703. EMS Instructor Lapsed Certification.**

(1) An EMS instructor whose instructor certification has expired for less than two years may again become certified by completing the recertification requirements in R426-12-702.

(2) An EMS instructor whose instructor certification has expired for more than two years must complete all initial instructor certification requirements and reapply as if there were no prior certification.

**R426-12-800. Emergency Medical Services Training Officer Requirements.**

(1) The Department may certify an individual as a training officer for a one year period.

(2) A training officer must abide by the terms of the "Training Officer Contract" and comply with the standards and procedures in the Training Officer Manual as incorporated into the "Training Officer Contract."

**R426-12-801. Emergency Medical Services Training Officer Certification.**

An individual who wishes to be certified as a training officer must:

(1) be currently certified as an EMS instructor;

(2) successfully complete the Department's seminar for new training officers;

(3) successfully complete any Department examinations;

(4) submit an application and pay all applicable fees; and

(5) submit annually a completed and signed "Training Officer Contract" to the Department agreeing to abide by the standards and procedures in the then current Training Officer Manual.

**R426-12-802. Emergency Medical Services Training Officer Recertification.**

A training officer who wishes to recertify as a training officer must:

(1) attend a training officer seminar every year;

(2) be currently certified as an EMS instructor;

(3) submit an application and pay all applicable fees;

(4) successfully complete any Department-examination requirements; and

(5) submit annually a completed and signed new "Training Officer Contract" to the department agreeing to abide to the standards and procedures in the then current training officer manual.

**R426-12-803. Emergency Medical Services Training Officer Lapsed Certification.**

A training officer whose training officer certification has expired must complete all initial training officer certification requirements and reapply as if there were no prior certification.

**R426-12-900. Course Coordinator Certification.**

(1) The Department may certify an individual as a course coordinator for a one year period.

(2) A course coordinator must abide by the terms of the "Course Coordinator Contract" and comply standards and procedures in the Course Coordinator Manual as incorporated into the "Course Coordinator Contract."

**R426-12-901. Course Coordinator Certification.**

An individual who wishes to certify as a course coordinator must:

(1) be certified as an EMS instructor for one year;

(2) be an instructor of record for at least one course;

(3) have taught a minimum of 15 hours in a course;

(4) have co-coordinated one course with a certified course coordinator;

(5) submit a written evaluation and recommendation from the course coordinator in the co-coordinated course;

(6) complete certification requirements prior to application to the Department's course for new course coordinators;

(7) submit an application and pay all applicable fees;

(8) complete the Department's course for new course coordinators;

(9) successfully complete all examination requirements; and

(10) sign and submit annually the "Course Coordinator Contract" to the Department agreeing to abide to the standards

and procedures in the then current Course Coordinator Manual.

**R426-12-902. Course Coordinator Recertification.**

A course coordinator who wishes to recertify as a course coordinator must:

(1) be currently certified as an EMS instructor;

(2) coordinate or co-coordinate at least one course every two years;

(3) attend a course coordinator seminar every year;

(4) submit an application and pay all applicable fees;

(5) successfully complete all examination requirements; and

(6) sign and submit annually a Course Coordinator Contract to the Department agreeing to abide to the policies and procedures in the then current Course Coordinator Manual.

**R426-12-903. Emergency Medical Services Course Coordinator Lapsed Certification.**

A course coordinator whose course coordinator certification has expired must complete all initial course coordinator certification requirements and reapply as if there were no prior certification.

**R426-12-1000. Course Approvals.**

A course coordinator offering EMS training to individuals to become certified must obtain Department approval prior to initiating an EMS training course. The Department shall approve a course if:

(1) the applicant submits the course application and fees no earlier than 90 days and no later than 30 days prior to commencing the course;

(2) the applicant has sufficient equipment available for the training or if the equipment is available for rental from the Department;

(3) the Department finds that the course meets all the Department rules and contracts governing training;

(4) the course coordinators and instructors hold current respective course coordinator and EMS instructor certifications; and

(5) the Department has the capacity to offer the applicable examinations in a timely manner after the conclusion of the course.

**R426-12-1100. Off-line Medical Director Requirements.**

(1) The Department may certify an off-line medical director for a four year period.

(2) An off-line medical director must be:

(a) a physician actively engaged in the provision of emergency medical care;

(b) familiar with the Utah EMS Systems Act, Title 26, Chapter 8a, and applicable state rules; and

(c) familiar with medical equipment and medications required under "R426 Equipment, Drugs and Supplies List."

**R426-12-1101. Off-line Medical Director Certification.**

An individual who wishes to certify as an off-line medical director must:

(1) have completed a American College of Emergency Physicians or National Association of Emergency Medical Physicians medical director training course or the Department's medical director training course or complete one within six months after becoming medical director; and

(2) submit an application and pay all applicable fees.

**R426-12-1200. Refusal, Suspension or Revocation of Certification.**

(1) The Department shall exclude from EMS certification an individual who may pose an unacceptable risk to public health and safety, as indicated by his criminal history. The Department shall conduct a background check on each individual who seeks to certify or recertify as an EMS personnel.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification from individuals convicted of the following crimes:

(i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

(ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.

(iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault

(B) Crimes defined as domestic violence under Section 77-36-1;

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity as a victim.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(2) Certified EMS personnel must notify the Department of any arrest or conviction within 30 days of the arrest or conviction.

(3) The Department may require EMS personnel to submit to a background examination or a drug test upon Department request.

(4) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(a) any of the reasons for exclusion listed in Subsection (1);

(b) a violation of Subsection (2);

(c) a refusal to submit to a background examination pursuant to Subsection (3);

(d) habitual or excessive use or addiction to narcotics or dangerous drugs;

(e) refusal to submit to a drug test administered by the individual's EMS provider organization or the Department;

(f) habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMS personnel or while driving any Department-permitted vehicle;

(g) failure to comply with the training, certification, or recertification requirements for the certification;

(h) failure to comply with a contractual agreement as an EMS instructor or a course coordinator;

(i) fraud or deceit in applying for or obtaining a certification;

(j) fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as a certified individual;

(k) unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) conviction of a felony, misdemeanor, or a crime involving moral turpitude, excluding minor traffic violations chargeable as infractions;

(o) mental incompetence as determined by a court of competent jurisdiction;

(p) demonstrated inability and failure to perform adequate patient care;

(q) inability to provide emergency medical services with reasonable skill and safety because of illness, drunkenness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated; and

(r) other or good cause, including conduct which is unethical, immoral, or dishonorable to the extent that the conduct reflects negatively on the EMS profession or might cause the public to lose confidence in the EMS system.

**R426-12-1201. Penalties.**

As required by Subsection 63-46a-3(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

**KEY: emergency medical services**
**October 1, 1999** **26-8a**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**
**R426-13. Emergency Medical Services Provider Designations.**
**R426-13-100. Authority and Purpose.**

This rule is established under Title 26, Chapter 8a. It establishes standards for the designation of emergency medical service providers.

**R426-13-200. Designation Types.**

(1)(a) An entity that provides pre-hospital emergency medical care, but that does not provide ambulance transport or paramedic service, may obtain a designation from the Committee as a quick response unit.

(b) An entity that accepts calls for 9-1-1 EMS assistance from the public, and dispatches emergency medical vehicles and field EMS personnel may obtain a designation from the Committee as an emergency medical dispatch center.

(2) Commencing July 1, 2000, a hospital that provides on-line medical control for prehospital emergency care must first obtain a designation from the Committee as a resource hospital.

**R426-13-300. Service Levels.**

A quick response unit may only operate and perform the skills at the service level at which it is designated. The Committee may designate at service levels that correspond to the:

(1) 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum;"

(2) 1999 United States Department of Transportation's "EMT-Intermediate Training Program: National Standard Curriculum;"

(3) 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum," with the IV module from the 1999 United States Department of Transportation's "EMT-Intermediate Training Program: National Standard Curriculum,"

**R426-13-400. Quick Response Unit Minimum Designation Requirements.**

A quick response unit must meet the following minimum requirements:

(1) have sufficient rescue vehicles, equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its designation;

(2) have locations for stationing its rescue vehicles;

(3) have a certified training officer;

(4) have a plan of operations, which shall include:

(a) the number, training, and certification of personnel;

(b) the scope of operations; and

(c) a description of how the designee proposes to interface with other EMS agencies;

(5) have sufficient trained and certified staff that meet the requirements of this rule, R426-5, and as may be necessary to carry out its responsibilities under its designation;

(6) have a certified off-line medical director; and

(7) not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504(1); or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

**R426-13-500. Emergency Medical Dispatch Center Minium Designation Requirements.**

An emergency medical dispatch center must:

(1) have in effect a selective medical dispatch system approved by the off-line medical directors and the Department, which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration;

(2) have a certified off-line medical director; and

(3) have an ongoing medical call review quality assurance program.

**R426-13-600. Quick Response Unit and Emergency Medical Dispatch Center Application.**

An entity desiring a designation or a renewal of its designation as a quick response unit or an emergency medical dispatch center shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the minimum requirements for the designation listed in this rule and the following:

(1) identifying information about the entity and its principals;

(2) the name of the person or governmental entity financially and otherwise responsible for the service provided by the designee and documentation from that entity accepting the responsibility;

(3) identifying information about the entity that will provide the service and its principals;

(4) if the applicant is not a governmental entity, a statement of type of entity and certified copies of the documents creating the entity;

(5) a description of the geographical area that it will serve;

(6) a plan of operation meeting the requirements of the application; and

(7) other information that the Department determines necessary for the processing of the application and the oversight of the designated entity.

**R426-13-700. Resource Hospital Minimum Requirements.**

A resource hospital must meet the following minimum requirements:

(1) be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah;

(2) have protocols for providing on-line medical direction to pre-hospital emergency medical care providers;

(3) have the ability to communicate with other EMS providers operating in the area; and

(4) be willing and able to provide on-line medical direction to quick response units, ambulance services and paramedic services operating within the state;

**R426-13-800. Resource Hospital Application.**

A hospital desiring to be designated as a resource hospital shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall provide:

(1) the name of the hospital to be designated;

(2) the hospital's address;

(3) the name and phone number of the individual who supervises the hospital's responsibilities as a designated resource hospital; and

(4) other information that the Department determines necessary for the processing of the application and the oversight of the designated entity.

**R426-13-900. Immediate Application Denial.**

(1) The Department may deny an application for a designation for any of the following reasons:

(a) failure to meet requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment or staffing requirements;

(c) failure to meet requirements for renewal or upgrade;

(d) conduct during the performance of duties relating to its responsibilities as an EMS provider that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;

(e) failure to meet agreements covering training standards or testing standards;

(f) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsifying or misrepresenting any information required for licensure or designation or by the application for either;

(i) failure to pay the required designation or permitting fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by statute or rule;

(k) misuse of grant funds received under Section 26-8a-207; and

(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant who has been denied a designation may request a Department review by filing a written request for reconsideration within thirty calendar days of the issuance of the Department's denial.

**R426-13-1000. Application Review and Award.**

(1) If the Department finds that an application for designation is complete and that the applicant meets all requirements, it may approve the designation.

(2) Issuance of a designation by the Department is contingent upon the applicant's demonstration of compliance with all applicable rules and a successful Department quality assurance review.

(3) A designation may be issued for up to a four-year period. The Department may alter the length of the designation to standardize renewal cycles.

**R426-13-1100. Change in Service Level.**

(1) A quick response unit that desires to upgrade its designation shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall provide:

(a) a letter of support from its off-line medical director;

(b) a copy of new treatment protocols for the upgraded service approved by the off-line medical director; and

(c) an updated plan of operations demonstrating the ability to provide the service.

(2) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a new designation reflecting the upgraded service.

**R426-13-1200. Criteria for Denial of Designation.**

(1) The Department may deny an application for designation for any of the following reasons:

(a) failure to meet requirements as specified in the rules governing the service;

(b) failure to meet vehicle or equipment requirements;

(c) failure to meet requirements for renewal or upgrade;

(d) conduct during the performance of duties relating to the responsibilities that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;

(e) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state;

(f) a history of criminal activity while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(g) falsifying the application or related documents for an EMS provider license or designation;

(h) failure to pay the required designation, permitting, or other fees or failure to pay outstanding balances owed to the Department;

(i) misrepresenting any information required for licensure or designation or by the application for either;

(j) failure to submit records and other data to the Department as required by R426-8;

(k) misuse of grant funds received under Section 26-8a-207; and

(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant who has been denied a designation may appeal by filing an appeal within thirty calendar days of the issuance of the Department's denial.

**R426-13-1300. Penalties.**

As required by Subsection 63-46a-3(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

**KEY: emergency medical services**

**October 12, 1999** **26-8a**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**

**R426-14. Ambulance Service and Paramedic Service Licensure.**

**R426-14-100. Authority and Purpose.**

This rule is established under Title 26, Chapter 8a. It establishes standards for the licensure of ambulance and paramedic services.

**R426-14-101. Requirement for Licensure.**

A person or entity that provides or represents that it provides ambulance or paramedic services must first be licensed by the department.

**R426-14-200. Licensure Types.**

The Department issues licenses for a type of service at a certain service level.

(1) The Department may issue ambulance licenses for the following types of service at the given levels:

(a) ground ambulance, EMT-B;

(b) ground ambulance, EMT-B-IV;

(c) ground ambulance, EMT-I;

(c) inter-facility transfer ground ambulance, EMT-B;

(d) inter-facility transfer ground ambulance, EMT-B-IV; and

(e) inter-facility transfer ground ambulance, EMT-I.

(2) The Department may issue paramedic licenses for the following types of service at the given response configurations:

(a) paramedic rescue;

(b) paramedic tactical rescue;

(c) paramedic ground ambulance; and

(d) paramedic ground ambulance inter-facility transfer service.

**R426-14-201. Scope of Operations.**

(1)(a) A ground ambulance, EMT-B, licensee may only provide service to a specific geographic service area and is responsible to provide service to its entire specific geographic service area. It may provide emergency medical transport and emergency medical services corresponding to the 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum" to a geographic service area.

(b) A ground ambulance, EMT–B-IV, licensee may only provide service to a specific geographic service area and is responsible to provide service to its entire specific geographic service area. It may provide emergency medical transport and emergency medical services corresponding to the 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum" and the IV module of the 1999 United States Department of Transportation's "EMT-Intermediate Training Program: National Standard Curriculum."

(c) A ground ambulance, EMT-I, licensee may only provide service to a specific geographic service area and is responsible to provide service to its entire specific geographic service area. It may provide emergency medical transport and emergency medical services corresponding to the 1999 United States Department of Transportation's "EMT-Intermediate Training Program: National Standard Curriculum."

(d) An inter-facility transfer ground ambulance, EMT-B, licensee may only provide service to a specific geographic service area. It may only provide emergency medical transport and emergency medical services during transport corresponding to the 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum." It may not provide emergency medical services in response to emergency dispatch, except as provided as a special condition to the license.

(e) An inter-facility transfer ground ambulance, EMT-B-IV, licensee may only provide service to a specific geographic service area. It may only provide emergency medical transport and emergency medical services during transport corresponding to the 1994 United States Department of Transportation's "EMT-Basic Training Program: National Standard Curriculum" and the IV module of the 1999 United States Department of Transportation's "EMT-Intermediate Training Program: National Standard Curriculum." It may not provide emergency medical services in response to emergency dispatch.

(f) An inter-facility transfer ground ambulance, EMT-I, licensee may only provide service to a specific geographic service area. It may only provide emergency medical transport and emergency medical services during transport corresponding to the 1999 United States Department of Transportation's "EMT-Intermediate Training Program: National Standard Curriculum." It may not provide emergency medical services in response to emergency dispatch.

(2) A paramedic licensee may only provide service to a specific geographic service area and is responsible to provide service to its entire specific geographic service area. It may only provide emergency medical services during transport corresponding to the 1998 United States Department of Transportation's "EMT-Paramedic Training Program: National Standard Curriculum." Paramedic licensees that are licensed for adjacent areas are encouraged to enter into mutual aid agreements to facilitate rapid response from the paramedic licensee closest to the scene. The Department licenses paramedic providers in one of the following response configurations:

(a) A paramedic rescue that relies on a licensed ambulance service to transport a patient.

(b) A paramedic tactical rescue may only provide combat medical response where the primary mission is the retrieval and field treatment of injured peace officers or victims of traumatic confrontations. It may only function at the invitation of the local or state public safety authority. When called upon for assistance, it must immediately notify the local ambulance licensee to coordinate patient transportation.

(c) A paramedic ground ambulance may be used routinely to transport patients. It must also comply with the requirements applicable to ground ambulances;

(d) A paramedic ground ambulance inter-facility transfer service may only be used to transport patients upon physician request between medical or nursing facilities. Unless otherwise licensed to do so, it may not provide paramedic rescue, paramedic quick response, or paramedic tactical rescue services. It may only provide service to a specific geographic service area.

**R426-14-300. Minimum Licensure Requirements.**

A licensee must meet the following minimum requirements:

(1) have sufficient rescue vehicles, equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license;

(2) have locations or staging areas for stationing its vehicles;

(3) have a dispatch agreement with a public safety answering point that answers and responds to 911 calls or with a local single access public safety answering point that answers and responds to requests for emergency assistance;

(4) enter into mutual aid agreements with other licensees to give assistance in times of unusual demand;

(5) have a certified EMS training officer;

(6) have a plan of operations, which shall include:

(a) the number, training, and certification of personnel;

(b) the scope of operations; and

(c) a description of the how the licensee proposes to interface with other EMS agencies;

(7) have sufficient trained and certified staff that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license;

(8) have a certified off-line medical director;

(9) if a paramedic tactical rescue, be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical rescue's geographic service area; and

(10) not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504(1); or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

**R426-14-301. Application, Department Review, and Issuance.**

(1) An applicant desiring to be licensed or to renew its license shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-14-300 and the following:

(a) identifying information about the entity and its principals;

(b) the name of the person or governmental entity financially and otherwise responsible for the service provided by the licensee and documentation from that entity accepting the responsibility;

(c) identifying information about the entity that will provide the service and its principals;

(d) a legal description, general description, and detailed map of the geographical area that it will serve;

(e) a detailed plan of operation meeting the requirements of the application;

(f) financial and insurance information; and

(g) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(2) If upon Department review the application is complete and it appears that the applicant meets all the requirements, the Department shall issue a notice of agency action as required in Section 26-8a-405.

(3) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statutes and rules and a successful Department quality assurance review.

(4) A license may be issued for up to a four-year period. The Department may alter the length of the license to standardize renewal cycles.

**R426-14-302. Immediate Application Denial.**

(1) The Department may deny an application for a license or a renewal of a license without reviewing whether a license must be granted or renewed to meet public convenience and necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violation of Subsection 26-8a-504(1);

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(g) falsification or misrepresentation of any information in the application or related documents;

(h) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;

(j) financial insolvency;

(k) failure to submit records and other data to the Department as required by R426-8;

(l) a history of inappropriate billing practices, such as:

(i) charging a rate that exceeds the maximum rate allowed by rule;

(ii) charging for items or services for which a charge is not allowed by statute or rule; or

(iii) Medicare or Medicaid fraud.

(m) misuse of grant funds received under Section 26-8a-207; and

(n) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant that has been denied a license may appeal by filing a written appeal within thirty calendar days of the issuance of the Department's denial.

**R426-14-400. Change in Service Level.**

(1) A ground ambulance, EMT-B licensee that desires to upgrade to a ground ambulance, EMT-B-IV or EMT-I and a ground ambulance, EMT-B-IV licensee that desires to upgrade to a ground ambulance EMT-I shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall provide:

(a) a copy of new treatment protocols for the upgraded service approved by the off-line medical director;

(b) an updated plan of operations demonstrating the ability

to provide the service; and

(c) an assessment of field performance by the licensee's off-line medical director

(2) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a revised license reflecting the new level of service without making a separate finding of public convenience and necessity.

**R426-14-401. Change of Owner or Operator.**

(1) A license and the vehicle permits terminate if the holder of a licensed service transfers ownership of the service to another party. The new owner must submit, within ten business days of acquisition, applications and fees for a new license and vehicle permits. The new owner must meet all the statutory and rules requirements as if applying for a new license.

(2) A license and the vehicle permits terminate if the operator listed on the license no longer provides the service. Any successor must file, within ten business days of succession, an application and submit fees for a new license and vehicle permits. The party applying for the license must meet all the statutory and rules requirements as if applying for a new license.

**R426-14-500. Mutual Aid.**

(1) An ground ambulance service may have in place agreements with other ground ambulance services to call upon them for assistance during times of unusual demand. A time of unusual demand exists in circumstances that the management of the ground ambulance service has determined that its current personnel and equipment are not sufficient to meet the needs of a particular incident, event or combination of incidents or events. A mutual aid agreement may not provide for the provision of ongoing service for a specified area or for specified time periods.

(2) A ground ambulance licensee must provide all ambulance service, including standby services, for any special event that requires ground ambulance service within its geographic service area. If the ground ambulance licensee is unable or unwilling to provide the special event coverage, the licensee may arrange with a ground ambulance licensee through the use of a mutual aid agreement to provide ground ambulance service for the special event.

**R426-14-600. Penalties.**

As required by Subsection 63-46a-3(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

**KEY: emergency medical services**
**October 4, 1999** **26-8a**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**
**R426-15. Licensed and Designated Provider Operations.**
**R426-15-100. Authority and Purpose.**

This rule is established under Title 26, Chapter 8a. It establishes standards for the operation of EMS providers licensed or designated under the provisions of the Emergency Medical Services System Act.

**R426-15-200. Staffing.**

(1) Ambulances, while providing ambulance services, shall have the following minimum complement of personnel:

(a) Two attendants, each of whom is a certified EMT-Basic, EMT-B-IV, EMT-Intermediate, or Paramedic.

(b) A driver, 18 years of age or older, who is the holder of a valid driver's license. If the driver is also an EMT-Basic, EMT-B-IV, EMT-Intermediate, EMT-Paramedic, the driver qualifies as one of the two required attendants.

(c) Ambulance services authorized by the Department to provide IV or Intermediate services shall assure that at least one EMT-I or EMT-B-IV responds on each call.

(d) If on-line medical control determines the condition of the patient to be "serious or potentially critical," at least one paramedic shall accompany the patient on board the ambulance to the hospital, if paramedics are on scene.

(e) If on-line medical control determines the condition of the patient to be "critical," the ambulance driver and two paramedics shall accompany the patient on board the ambulance to the hospital, if paramedics are on scene.

(2) Paramedic services shall have the following minimum complement of personnel:

(a) Staffing at the scene of an accident or medical emergency shall be no less than two persons, each of whom is a Paramedic;

(b) If a paramedic ground ambulance or paramedic ground ambulance inter-facility transfer service has been requested by a transferring physician for inter-facility movement of a patient, the staffing shall be as follows:

(i) If the physician describes the condition of the patient as "serious or potentially critical," minimum staffing shall be two paramedics;

(ii) If the physician describes the condition of the patient as "critical," minimum staffing shall be the ambulance driver and two paramedics.

(3) Each licensee shall maintain a personnel file for each certified individual. The personnel file must include records documenting the individual's qualifications, training, certification, immunizations, and continuing medical education.

**R426-15-201. Vehicle Permit.**

(1) EMS provider organizations that operate vehicles that Section 26-8a-304 requires to have a permit must annually obtain a permit and display a permit decal for each of its vehicles used in providing the service.

(2) The Department shall issue annual permits for vehicles used by licensees only if the new or replacement ambulance meets the:

(a) Federal General Services Administration Specification for ground ambulances as of the date of manufacture; and

(b) equipment and supply requirements of "R426 Equipment, Drug and Supplies List."

(3) The Committee may give consideration for a variance from the requirements of Subsection (2) to communities with limited populations or unique problems for purchase and use of ambulance vehicles.

(4) The permittee shall display the permit decal showing the expiration date and number issued by the Department on a publicly visible place on the vehicle.

(5) Permits and decals are not transferrable to other vehicles.

**R426-15-202. Permitted Vehicle Operations.**

(1) Ambulance licensees shall notify the Department of the location or staging areas of each vehicle and whenever it changes the location or staging areas for each vehicle.

(2) Vehicles shall be maintained on a premises suitable to make it available for immediate use, in good mechanical repair, properly equipped, and in a sanitary condition.

(3) Each ambulance shall be maintained in a clean condition with the interior being thoroughly cleaned after each use in accordance with OSHA standards.

(4) Each ambulance shall be equipped with adult and child safety restraints and to the point practicable all occupants must be restrained.

**R426-15-203. Vehicle Supply Requirements.**

(1) In accordance with the licensure or designation type and level, the permittee shall carry on each permitted vehicle the minimum quantities of supplies, medications, and equipment as described in "R426 Equipment, Drug and Supplies List."

(2) The department shall develop, enforce, maintain and modify "R426 Equipment, Drug and Supplies List" as other needs or new methodologies become known.

(3) The permittee may carry on a permitted vehicle only equipment, supplies, and medications that are authorized by the Department.

(4) All equipment, except disposable items, shall be so designed, constructed, and of such materials that under normal conditions and operations, it is durable and capable of withstanding repeated cleaning. The permittee:

(a) shall clean the equipment after each use in accordance with OSHA standards;

(b) shall sanitize or sterilize equipment prior to reuse;

(c) may not reuse equipment intended for single use;

(d) shall clean and change linens after each use; and

(e) shall store or secure all equipment in a readily accessible and protected manner and in a manner to prevent its movement during a crash.

(5) The permittee shall test, maintain, and calibrate its equipment in accordance with the manufacturer's standards.

(a) The permittee shall maintain a working agreement with an authorized technician for regular maintenance and annual inspection for certification of the equipment's ability to function correctly.

(b) The permittee shall document all equipment inspections, testing, maintenance, and calibrations. Testing or calibration conducted by an outside service shall be documented and available for Department review.

(c) A permittee required to carry any of the following equipment shall perform monthly inspections to ensure its ability to function correctly:

(i) defibrillator, manual or automatic;

(ii) autovent;

(iii) infusion pump;

(iv) glucometer;

(v) flow restricted, oxygen-powered ventilation devices;

(vi) suction equipment;

(vii) electronic Doppler device;

(viii) automatic blood pressure/pulse measuring device;

(ix) pulse oximeter.

(d) For all pieces of required equipment that require consumables for the operation of the equipment; power supplies; electrical cables, pneumatic power lines, hydraulic power lines, or related connectors, the permittee shall perform monthly inspections to ensure their correct function

(7) A licensee shall:

(a) store all medications according to the manufacturers' recommendations for temperature control and packaging requirements; and

(b) return to the licensee's designated resource hospital for replacement any medication known or suspected to have been subjected to temperatures outside the recommended range.

**R426-15-204. Insurance.**

(1) An ambulance licensee shall provide the Department with a copy of his certificate of insurance, showing proof of his ability to respond to damages due to operation of the vehicle, in the manner and minimum amounts specified below:

(a) Liability insurance in the amount of $100,000 for each individual claim and $300,000 for total claims for personal injury from any one occurrence.

(b) Liability insurance in the amount of $25,000 for property damage from any one occurrence.

(2) The ambulance licensee shall obtain the insurance from an insurance company authorized to write liability coverage in the state of Utah or through a self-insurance program.

(3) The ambulance licensee shall report any coverage change to the Department within 60 days after the change. The ambulance licensee must direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage.

**R426-15-205. Communications.**

All permitted vehicles shall be equipped to allow field EMS personnel to be able to:

(1) communicate with hospital emergency departments, dispatch centers, EMS providers, and law enforcement services; and

(2) communicate on radio frequencies assigned to the Department for EMS use by the Federal Communications Commission.

**R426-15-300. Emergency Medical Dispatch Center.**

An emergency medical dispatch center must annually provide organizational information to the Department.

**R426-15-400. Resource Hospital.**

(1) A resource hospital must provide on-line medical control for all prehospital EMS providers who request assistance for patient care, 24 hours-a-day, seven days a week. A resource hospital must:

(a) create and abide by written prehospital emergency patient care protocols for use in providing on-line medical control for prehospital EMS providers;

(b) train new staff on the protocols before the new staff is permitted to provide on-line medical control; and annually review with physician and nursing staff

(c) annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control; and

(d) make the protocols immediately available to staff for reference.

(2) The on-line medical control shall be by direct voice communication with a physician or a registered nurse or physician's assistant licensed in Utah who is in voice contact with a physician.

(3) A resource hospital must establish and actively implement a quality improvement process.

(a) The hospital must designate a medical control committee.

(b) The committee must meet at least quarterly to review and evaluate prehospital emergency runs, continuing medical education needs and EMS system administration problems.

(i) Committee members must include an emergency physician representative, hospital nurse representative, hospital administration representative, and ambulance and emergency services representatives.

(ii) The hospital must keep minutes of the medical control committee's meetings and make them available for Department review.

(c) The hospital must appoint a quality review coordinator for the prehospital quality improvement process.

(d) The hospital must cooperate with the prehospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular prehospital EMS provider.

(e) The hospital must assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format specified by the Department, quarterly data specified by the Committee.

(4) A resource hospital shall make initial and replacement medications and IV fluids available to all EMS providers authorized to use them.

**R426-15-401. Medical Control.**

(1) All licensees and quick response units must enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care provided by the field EMS personnel. The physician must be familiar with:

(a) the design and operation of the local prehospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols.

(3) The off-line medical director shall ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(4) The off-line medical director shall:

(a) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(b) annually review triage, treatment, and transport protocols and update them as necessary;

(c) suspend from patient care, pending Department review, a field EMS personnel who does not comply with local medical triage, treatment and transport protocols, who violates any of the EMS rules, or who the medical director determines is providing emergency medical serivce in a careless or unsafe manner. The medical director must notify the Department within one business day of the suspension.

(d) Attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

**R426-15-402. Scene and Patient Management.**

(1) Upon arrival at the scene of an injury or illness, the field EMS personnel shall secure radio or telephonic contact with the resource hospital to establish on-line medical control as quickly as possible.

(2) If radio or telephonic contact cannot be obtained, the field EMS personnel shall so indicate on the EMS report form and follow local written protocol;

(3) If there is a physician at the scene who wishes to assist or provide on-scene medical direction to the field EMS personnel, the field EMS personnel must follow his instructions, but only until communications are established with the physician at the resource hospital. If the proposed treatment from the on-scene physician differs from existing EMS triage, treatment and transport protocols and is contradictory to quality patient care, the field EMS personnel may revert to existing EMS triage, treatment and transport protocols for the continued management of the patient.

(4) If the physician at the scene wishes to continue directing the field EMS personnel's activities, the field EMS personnel shall so notify on-line medical control;

(5) The on-line medical control may:

(a) allow the on-scene physician to assume or continue medical control;

(b) assume medical control, but allowing the physician at the scene to assist; or

(c) assume medical control with no participation by the on-scene physician.

(5) If on-line medical control allows the on-scene physician to assume or continue medical control, the field EMS personnel shall repeat the on-scene physician's orders to the on-line medical control for evaluation and recording. If, in the judgment of the on-line medical control who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the on-line medical control may reassume medical control of the field EMS personnel at the scene.

**R426-15-500. Pilot Projects, Variances, Waivers.**

(1) A persons who proposes to undertake a research or study project which requires waiver of any rule must have a project director who is a physician licensed to practice medicine in the state of Utah, and must submit a written proposal to the Department for presentation to the EMS Committee.

(2) The proposal shall include the following:

(a) A project description that describes the:

(i) need for project;

(ii) project goal;

(iii) specific objectives;

(iv) methodology for the project implementation;

(v) geographical area involved by the proposed project;

(vi) specific rule or portion of rule to be waived;

(vii) proposed waiver language; and

(viii) evaluation methodology.

(b) A list of the EMS providers and hospitals participating in the project;

(c) A signed statement of endorsement from the participating hospital medical directors and administrators, the director of each participating paramedic and ambulance licensee, other project participants, and other parties who may be significantly affected.

(d) If the pilot project requires the use of additional skills, a description of the skills to be utilized by the field EMS personnel and provision for training and supervising the field EMS personnel who are to utilize these skills, including the names of the field EMS personnel.

(e) The name and signature of the project director attesting to his support and approval of the project proposal.

(3) If the pilot project involves human subjects research, the applicant must also obtain Department Institutional Review Board approval.

(4) The EMS Committee may require the applicant to meet additional conditions as it considers necessary or helpful to the success of the project, integrity of the EMS system, and safety to the public.

(5) The Committee may initially grant project approval for one year. The Committee grant approval for continuation beyond the initial year based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Department at least 90 days prior to the end of the approved period. A pilot project may not exceed three years;

(6) The Committee may only waive a rule if:

(a) the applicant has met the requirements of this section;

(b) the waiver is not inconsistent with statutory requirements;

(c) there is not already another pilot project being conducted on the same subject; and

(d) it finds that the pilot project has the potential to improve pre-hospital medical care.

(7) Approval of a project allows the field EMS personnel listed in the proposal to exercise the specified skills of the participants in the project. The project director shall submit the names of field EMS personnel not initially approved to the Department for consideration by the EMS Committee.

(8) The EMS Committee may rescind approval for the project at any time if:

(a) those implementing the project fail to follow the protocols and conditions outlined for the project;

(b) it determines that the waiver is detrimental to public health; or

(c) it determines that the project's risks outweigh the benefits that have been achieved.

(9) The Committee shall allow the EMS provider involved in the study to appear before the Committee to explain and express its views before determining to rescind it the waiver for the project.

(10) At least six months prior to the planned completion of the project, the medical director shall submit to the Department a report with the preliminary findings of the project and any recommendations for change in the project requirements;

**R426-15-600. Confidentiality of Patient Information.**

Licensees, designees, and EMS certified individuals shall not disclose patient information except as necessary for patient care or as allowed by statute or rule.

**R426-15-700. Penalties.**

As required by Subsection 63-46a-3(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

**KEY: emergency medical services**
**October 12, 1999** **26-8a**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**

**R426-16. Emergency Medical Services Maximum Ambulance Transportation Rates and Charges.**

**R426-16-1. Authority and Purpose.**

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ambulance services in the State of Utah.

**R426-16-2. Maximum Ambulance Transportation Rates and Charges.**

(1) Licensed services operating under R426-3 shall not charge more than the maximum rates described is this rule. In addition, the net income of licensed services, including subsidies of any type, shall not exceed the net income limit set by this rule.

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on an annual review of the most recent 12 month percentage change in price levels from the following sources: U.S. Bureau of Labor Statistics Occupational Employment and Wage Data, the National Consumer Pricing Index (CPI), the State of Utah Governor's Office of Planning and Budget economic report; the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Consumers transportation and medical care categories, and the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Wage Earners and Clerical Workers transportation and medical categories. The adjustment shall be made effective and published by order of the Department prior to June 1 of each year and become effective July 1, of each year. As of the beginning of fiscal year 2000, all licensed services will collect financial data as delineated by the department to be submitted as detailed under R426-8-2(10). This data shall then be used as the basis for the annual rate adjustment beginning July 1, 2001.

(3) Base Rates

(a) Basic ambulance - $235.68 per transport.

(b) Intermediate ambulance - $279.88 per transport.

(c) Paramedic Ambulance Transfer Service inter-facility transports, and Paramedic Ambulance transports that provide basic life support - $353.54 per transport.

(d) Paramedic ambulance transports that, under physician medical direction, provide basic or intermediate ambulance transports that have paramedics on-board to continue advanced life support initiated by a paramedic rescue service - Basic ambulance service - $424.24 per transport, Intermediate ambulance service - $468.44 per transport. Any ambulance service that interfaces with a paramedic rescue service must have an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to the maximum of $147.31 per transport.

(4) $10.32 per mile or fraction thereof. In all cases mileage shall be computed from the point of pickup to the point of delivery.

(5) Surcharges -

(a) A surcharge of $23.38 per transport may be assessed for emergency responses.

(b) A surcharge of $23.38 per transport may be assessed for ambulance service between the hours of 8:00 p.m. and 8:00 a.m.

(c) Where the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of $19.48 per transport may be assessed.

(6) Special Provisions -

(a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The emergency surcharge, night surcharge and mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) A round trip may be billed as two one-way trips.

(c) An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge $12.99 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge $12.99 per quarter hour or fraction thereof thereafter.

(7) Where an ambulance is summoned to a medical emergency by a dispatch agency, but does not transport, a charge of $194.88 may be assessed.

(8) Supplies shall be priced fairly and competitively with similar products in the local area.

(9) Uncontrollable Cost Escalation -

(a) In the event of a temporary escalation of costs, an ambulance service may petition the EMS Committee for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.

(b) The petition shall be submitted to the Department, which shall within 30 days, notify the ambulance service of the date and time of the next EMS Committee meeting and the disposition of the petition. Prior to the EMS Committee meeting, the Department shall evaluate the petition for reasonableness and prepare a written response for consideration by the EMS Committee. The EMS Committee may reject, modify or adopt the proposed surcharge as a proposed rule and direct the Department to submit a notice of rule change to the Division of Administrative Rules in accordance with the Rulemaking Act. The public comment period shall include a public hearing.

(10) The licensed service shall file with the Department within five months of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria specified in the EMS Committee's "Department of Health Uniform Licensed Service Fiscal

Reporting Guide". The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting, beginning 2001.

(11) Fiscal audits

(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established in the "Department of Health Uniform Licensed Service Fiscal Reporting Guide." The Department, or its representative, may audit licensed services to verify the information given in the report.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.

**R426-16-3. Paramedic Fees and Charges.**

A resource hospital may recover the cost, through the patient billing process for supplies and drugs administered by the Paramedic to patients, if the supplies or drugs were subsequently replaced by the hospital as outlined in the Emergency Medical Services Operational Standards.

**R426-16-4. Penalty for Violation of Rule.**

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

**KEY: emergency medical services**
**October 4, 1999 26-8a**

**R426. Health, Health Systems Improvement, Emergency Medical Services.**

**R426-100. Emergency Medical Services Do Not Resuscitate.**

**R426-100-1. Purpose.**

This rule implements the prehospital Emergency Medical Services/Do Not Resuscitate (EMS/DNR) provisions of Section 75-2-1105.5.

**R426-100-2. EMS/DNR Forms, Directives, and Bracelets.**

(1) Only the Utah Department of Health may create EMS/DNR forms. Each EMS/DNR form must have a state of Utah watermark and a unique identifying number provided by the Department.

(2) The Department shall distribute the EMS/DNR directive forms to any licensed physician as requested.

(3) An EMS/DNR directive is valid only if made on an EMS/DNR form upon which a physician licensed to practice medicine under Part 1 of Chapter 12, Title 58, the Utah Osteopathic Medicine Licensing Act, or under Part 5, of Chapter 12, Title 58, the Utah Medical Practice Act, also makes a determination certifying that the declarant is in a terminal condition.

(4) Only the Department may create an EMS/DNR bracelet which may be issued only to individuals whose physician has determined that the declarant is in a terminal condition and who submits an EMS/DNR directive to the Department. The bracelet shall clearly display the declarant's name, the name of the proxy if the EMS/DNR directive was made by a proxy, attending physician's name and telephone number, and the unique identifying number from the EMS/DNR form.

**R426-100-3. Issuance of an EMS/DNR Directive, or Bracelet.**

(1) If the prospective declarant or proxy desires to make an EMS/DNR directive, the physician who makes the determination that the declarant is in a terminal condition must:

(a) explain to the prospective declarant or proxy, and his family, the significance of making an EMS/DNR directive;

(b) complete the information requested on the EMS/DNR form;

(c) sign and date the EMS/DNR form certifying that the declarant is in a terminal condition;

(d) give the original of the directive with the watermark to the declarant or the proxy; and

(e) fill out and give to the declarant or proxy the authorized EMS/DNR bracelet to be placed on the declarant.

(2) The physician or designee, who places the bracelet, must explain to the declarant or proxy how and by whom the EMS/DNR directive may be revoked.

(3) The physician or designee, shall confirm with the Department the execution of the EMS/DNR directive and placement of the EMS/DNR and bracelet or necklace by submitting a duplicate original of the EMS/DNR directive to the Department.

(4) The EMS/DNR directive is effective immediately upon the physician's signing the EMS/DNR directive. The EMS/DNR directive is the property of the declarant and shall be kept with the declarant's medical record, but is not part of the medical record.

(a) To be honored by EMS personnel, the EMS/DNR directive must be placed in an unobstructed view above the declarant on the wall or in close proximity to the head of the bed or the declarant must be wearing the EMS/DNR bracelet, except in health care facilities licensed pursuant to Title 26, Chapter 21.

(b) To be honored by EMS personnel who are called to render service in health care facilities licensed pursuant to Title 26, Chapter 21, the EMS/DNR directive must be displayed in the declarant's medical record or the declarant must be wearing an EMS/DNR bracelet. Health care facility personnel must present the medical record to responding EMS personnel upon their arrival. Health care facilities shall document for Department review that appropriate health care facility staff have been informed of the declarant's EMS/DNR directive sufficient to notify EMS personnel of the existence of the EMS/DNR directive.

(5) If the EMS/DNR directive is not complete or does not appear to conform to statutory and regulatory requirements, the Department shall notify the physician and explain the defect or defects and shall notify the declarant or proxy and EMS agencies likely to respond to the declarant.

**R426-100-4. Revocation of an EMS/DNR Directive.**

(1) An EMS/DNR bracelet is the embodiment of an EMS/DNR directive and shall be given the same legal treatment as the actual EMS/DNR directive. An EMS/DNR directive may be revoked as provided in Section 75-2-1111.

(2) If both the original of the EMS/DNR directive with the watermark and the EMS/DNR bracelet are not intact, or have been defaced, the EMS/DNR directive is invalid. If an EMS/DNR directive is revoked, EMS personnel must provide emergency medical services to the declarant as if no EMS/DNR directive had been issued.

(3) If there is any question about the validity of an EMS/DNR directive, the EMS personnel must provide emergency medical services to the declarant as if no EMS/DNR directive had been issued.

**R426-100-5. Treatment of a Declarant with an EMS/DNR Directive.**

(1) As part of routine patient assessment, EMS personnel must inspect to see if the declarant is wearing an EMS/DNR bracelet or has an EMS/DNR directive either clearly displayed or located within the declarant's medical record file. If the EMS/DNR directive appears to be incorrectly executed, incomplete, or otherwise flawed in the making, EMS personnel need not honor the EMS/DNR directive. EMS personnel are not liable for failure to honor an EMS/DNR directive.

(2) An EMS/DNR directive only directs that life sustaining procedures be withheld. It does not direct the withholding of medication or the performance of any medical procedure either of which is intended to provide comfort care or to alleviate pain.

(3) In the case of a declarant who has sustained a recent injury clearly unrelated to the terminal condition that served as the basis for the EMS/DNR directive, EMS personnel may contact medical control regarding the provision of emergency medical services to the declarant.

**KEY: emergency medical services**
**October 12, 1999** **75-2-1105.5**

**R527. Human Services, Recovery Services.**
**R527-231. Review and Adjustment of Child Support Order.**
**R527-231-1. Review and Adjustment of Child Support Order.**

1. If the child is within one year of emancipation, the Office of Recovery Services/Child Support Services (ORS/CSS) shall not be required to review the award for potential adjustment.

2. If the location of either parent is unknown, ORS/CSS shall not be required to review the support award for possible adjustment until both parents are located.

3. ORS/CSS shall pursue adjustment of a court order only for child support or medical support provisions. ORS/CSS shall not pursue modification of a court order for custody, visitation, property division or other non-child support related provisions.

4. If the parent requesting the review does not provide the necessary information for ORS/CSS to conduct the review, ORS/CSS shall send notice to the address on record for the requesting and non-requesting parents that the review process will be terminated unless the non-requesting parent requests that the review process continue.

5. If the review process is terminated, ORS/CSS shall not be required to review the order for a period of one year.

**KEY: child support**
**October 18, 1999** **78-45-7.2**
**Notice of Continuation December 9, 1996** **62A-11-320.5**
**62A-11-320.6**

**R590. Insurance, Administration.**
**R590-67. Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers.**
**R590-67-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Insurance Code.

**R590-67-2. Application of Rule.**

This rule is applicable to all domestic stock insurers having 100 or more stockholders: provided, however, that this rule may not apply to any insurer if 95% or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by fewer than 500 stockholders. A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents and authorizations complying with the requirements of the Securities and Exchange Act of 1934 and Rule X-14 of the Securities and Exchange Commission shall be exempt from the provisions of this rule.

**R590-67-3. Proxies, Consents and Authorizations.**

No domestic stock insurer, or any director, office or employee of the insurer subject to Section 2, or any other person, may solicit, or permit the use of his name to solicit, by mail or otherwise, any proxy, consent or authorization of any stock of the insurer in contravention of this rule. The following documents are available from the Insurance Department:

A. "Proxy Form A", entitled "Information Required in Proxy Statement,"

B. "Proxy Form B", entitled "Information To Be Included in Statement Filed by or on Behalf of a Participant, Other Than the Insurer, In a Proxy Solicitation in an Election Contest."

**R590-67-4. Disclosure of Equivalent Information.**

Unless proxies, consents or authorizations of a stock of a domestic insurer subject to Section 3 of this rule are solicited by or on behalf of the management of the insurer from the holders of record of stock of the insurer in accordance with this rule and its schedules prior to any annual or other meeting, the insurer shall, in accordance with this rule or other rule, or both, as the commissioner may adopt, file with the commissioner and transmit to all stockholders of record, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

**R590-67-5. Definitions.**

A. The definitions and instructions set out in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, shall be applicable for purposes of this rule.

B. The terms "solicit" and "solicitation" for purposes of this rule shall include:

1. any request for a proxy, whether or not accompanied by or included in a form of proxy; or

2. any request to execute or not to execute, or to revoke, a proxy; or

3. the furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

C. The terms "solicit" and "solicitation" may not include:

1. any solicitation by a person of a stock of which he is the beneficial owner;

2. action by a broker or other person in respect to stock carried in his name or in the name of his nominee in forwarding to the beneficial owner of the stock soliciting material received from the company, or impartially instructing the beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy, or impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; and

3. the furnishing of a form of proxy to a stockholder upon the unsolicited request of the stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

**R590-67-6. Information to be Furnished to Stockholders.**

A. No solicitation subject to this rule may be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Proxy Form.

B. If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to Subsection A of this section shall be accompanied or preceded by an annual report, in preliminary or final form, to the stockholders containing the financial statements for the last fiscal year as are referred to in Schedule SIS under the heading "Financial Reporting to Stockholders." Subject to the foregoing requirements with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

C. Two copies of each report sent to the stockholders pursuant to this section shall be mailed to the commissioner not later than the date on which the report is first sent or given to stockholder or the date on which preliminary copies of solicitation material are filed with the commissioner pursuant to Subsection A of Section 8, whichever date is later.

**R590-67-7. Requirements as to Proxy.**

A. The form of proxy:

1. shall indicate in boldface type whether or not the proxy is solicited on behalf of the management;

2. shall provide a specifically designated blank space for dating the proxy; and

3. shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management, or stockholders.

No reference need be made to proposals as to which discretionary authority is conferred pursuant to Subsection C of this section.

B. Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to in the proxy, other than elections to office. A proxy may confer discretionary authority with respect to matters where a choice is not so specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each case.

C. A proxy may confer discretionary authority with respect to other matters which may come before the meeting, provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy.

D. No proxy may confer authority:

1. to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement; or

2. to vote at any annual meeting other than the next annual meeting, or any adjournment of the annual meeting, to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.

E. The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy will be voted and that where the person solicited specifies by means of ballot provided pursuant to Subsection B of this section, a choice with respect to any matter to be acted upon, the vote will be in accordance with the specifications so made.

F. The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter with appropriate headings. All printed proxy statements shall be clearly and legibly presented.

**R590-67-8. Material Required to be Filed.**

A. Two preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently shall be filed with the commissioner at least ten days prior to the date definitive copies of the material are first sent or given to stockholders, or the shorter period prior to that date as the commissioner may authorize upon a showing of good cause.

B. Two preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two days, exclusive of Saturdays, Sundays or holidays, prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to the date the commissioner may authorize upon a showing of good cause.

C. Two definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which this material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date the material is first sent or given to the stockholders.

D. Where any proxy statement, form of proxy or other material filed pursuant to these rules is amended or revised, two of the copies shall be marked to clearly show the changes.

E. Copies of replies to inquiries from stockholders requesting further information and copies of communications, which do no more than request that forms of proxy solicited be signed and returned, need not be filed pursuant to this section.

F. Notwithstanding the provisions of Subsections A and B of this section and of Subsection E of Section 11, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the commissioner prior to use or publication. Definitive copies shall be filed with or mailed for filing to the commissioner as required by Subsection C of this section, not later than the date the material issued or published. The provisions of Subsections A and B of this section and Subsection E of Section 11 shall apply to any reprints or reproductions of all or any part of the material.

**R590-67-9. False or Misleading Statements.**

No solicitation subject to this rule shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements in the solicitation not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

**R590-67-10. Prohibition of Certain Solicitations.**

No person making a solicitation which is subject to this rule may solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.

**R590-67-11. Special Provisions Applicable to Election Contests.**

A. Applicability. This section shall apply to any solicitation to this rule by any person or group for the purpose of opposing a solicitation subject to this rule by any other person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.

B. Participant or Participant in a Solicitation.

1. For purposes of this section the term "participant" and "participant in a solicitation" include:

(a) the insurer;

(b) any director of the insurer, and any nominee for whose election as a director proxies are solicited; and

(c) any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing or financing the solicitation.

2. For the purposes of this section the terms "participant" and "participant in a solicitation" do not include:

(a) a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant;

(b) any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

(c) any person employed in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the performance of his duties in the course of employment;

(d) any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates whose is not otherwise a participant; or

(e) any officer or director of, or any person regularly employed by any other participant, if the officer, director, or employee is not otherwise a participant.

C. Filing of Information Required by Proxy Form.

1. No solicitation subject to this section may be made by any person other than the management of an insurer unless at least five business days prior to, or a shorter period as the commissioner may authorize upon showing of good cause, there has been filed with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified by Proxy Form and a copy of any material proposed to be distributed to stockholders in furtherance of the solicitation. Where preliminary copies of any materials are filed, distribution to stockholders should be deferred until the commissioner's comments have been received and complied with.

2. Within five business days after a solicitation subject to this section is made by the management of an insurer, or longer period as the commissioner may authorize upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Proxy Form.

3. If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this section in opposition to it, a statement in duplicate containing the information specified in Proxy Form shall be filed with the commissioner by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition to it.

4. If, subsequent to the filing of the statements required by Subsections A, B, and C of this section, additional persons become participants in a solicitation subject to this rule, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified by Proxy Form, within three business days after the person becomes a participant, or the longer period as the Department may authorize upon a showing of good cause.

5. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.

6. Each statement and amendment filed pursuant to this paragraph shall be part of the public files of the commissioner.

D. Solicitations Prior to Furnishing Required Written Proxy Statement.

Notwithstanding the provisions of Subsection A of Section 6, a solicitation subject to this section may be made prior to furnishing stockholders a written proxy statement containing the information specified in Proxy Form with respect to the solicitation, provided that:

1. the statements required by Subsection C of this section are filed by or on behalf of each participant in the solicitation;

2. no form of proxy is furnished to stockholders prior to the time the written proxy statement required by Subsection A of Section 6 is furnished to the persons provided that Subsection B of this section may not apply where a proxy statement then meeting the requirements of Proxy Form has been furnished to stockholders;

3. the information specified in Subsection 2 and 3 of C of this section, of the statements required by Subsection C of this section to be filed by each participant, or an appropriate summary of it, are included in each communication sent or given to stockholders in connection with the solicitation; and

4. a written proxy statement containing the information specified in Proxy Form with respect to a solicitation is sent or given stockholders at the earliest practicable date.

E. Solicitations Prior to Furnishing Required Written Proxy Statement - Filing Requirements.

Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by Subsection A of Section 6 shall be filed with the commissioner in preliminary form at least five business days prior to the date definitive copies of the material are first sent or given to the persons, or shorter period as the commissioner may authorize upon a showing of good cause.

F. Application of This Section to Report.

Notwithstanding the provisions of Subsections B and C of Section 6, two copies of any portion of the report referred to in subsection two of section five which comments upon or refers to any solicitation subject to this section, or to any participant in any solicitation subject to this section, or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the report are first sent or given to stockholders.

**R590-67-12. Separability.**

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 may not be affected.

**KEY: insurance law**
**1989** **31A-2-201**
**Notice of Continuation October 15, 1999**

**R590. Insurance, Administration.**
**R590-76. Health Maintenance Organizations.**
**R590-76-1. Authority.**

This Rule is issued pursuant to the authority set forth in Chapter 8 of Title 31A, and 31A-2-201(3), Utah Insurance Code.

**R590-76-2. Purpose.**

The purpose of this Rule is to implement Chapter 8 of Title 31A, Utah Insurance Code; to assure the availability, accessibility, and quality of services provided by health maintenance organizations; to provide standards for terms and provisions contained in health maintenance organization contracts and certificates; to provide standards for determining financial condition; and to provide other standards deemed necessary to protect the interests of the citizens of Utah.

**R590-76-3. Applicability and Scope.**

This Rule applies on or after the effective date to all health maintenance organizations required to obtain a certificate of authority in this state under Chapter 8 of Title 31A, Utah Insurance Code. If any provision of this Rule conflicts with provisions of any other Rule issued by the Commissioner, the provisions of this Rule shall be controlling for health maintenance organizations.

**R590-76-4. Definitions.**

A. Basic Health Care Services means emergency care, inpatient hospital care, physician care, outpatient medical services, and out-of-area coverage. It includes the following.

1. Emergency care services are health care services required to treat an acute health condition which requires immediate medical attention in order to preserve the enrollee's life or to prevent an imminent deterioration of the enrollee's health.

(a) Within the service area. Emergency care services within the service area include services from non-affiliated providers if a delay in receiving care from an affiliated provider could reasonably be expected to jeopardize the enrollee's life or health.

(b) Outside of the service area. Emergency care services outside of the service area include services from nonaffiliated providers.

(2) Medically necessary inpatient hospital services, meaning hospital services including but not limited to room and board; general nursing care; special diets; use of operating room and related facilities; use of intensive care units and services; x-ray, lab and other diagnostic tests; drugs, medications, biologicals, anesthesia and oxygen services; physical therapy, radiation therapy and inhalation therapy; administration of whole blood and blood plasma, and short term rehabilitation services.

(3) Inpatient physician care services, meaning medically necessary health care services performed, prescribed, or supervised by physicians or other health professionals including diagnostic, therapeutic, medical, surgical, preventive, referral, and consultative services.

(4) Outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, a non-hospital based facility or at a hospital. Outpatient medical services may include but are not limited to diagnostic services, treatment services, laboratory services, x-ray services, referral services, and physical therapy, radiation therapy and inhalation therapy. Outpatient services also include preventive health services, services for infertility, physical examinations, well child care from birth, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice.

B. Copayment means the amount paid in addition to premiums by an enrollee for service(s).

C. Eligible dependent means any member of an enrollee's family who meets the eligibility requirements set forth in the contract.

D. Enrollee is an insured person and includes subscriber, members, and covered dependents enrolled in an Organization.

E. Group contract means a contract for health care services which by its terms limits eligibility to enrollees of a specified group.

F. Hospital means a facility duly licensed and operating within the scope of its licensure as such.

G. Individual Contract or Nongroup Contract means a contract for health care services issued to and covering an individual or a family.

H. Medical Necessity or medically necessary mean required for and consistent with the diagnosis, care, and treatment of a condition, disease, ailment, or injury which is covered under the group or nongroup contract and which service is not provided solely for the convenience of the enrollee or a provider. Medical necessity shall be determined by both the enrollee's primary care physician and, if requested by the Organization, by other competent medical authority designated by the Organization and at its expense. Medical necessity shall be determined according to generally accepted principles of good medical practice in the community.

I. Organization - as used in this rule means health maintenance organization.

J. "Out-of-area services" means the health care services that a health maintenance organization covers when its enrollees are outside of the service area.

K. Primary Care Physician means a physician who supervises, coordinates, and provides initial and basic care to enrollees; initiates their referral for specialist care; and maintains continuity of patient care.

L. Provider means a facility or person licensed to provide health care services in Utah, with services limited to the scope of the license.

M. Service Area means the geographical area within a forty 40 mile radius of the Organization's nearest health care services facility.

N. Supplemental Health Care Services - means any health services other than the Basic Health Services.

**R590-76-5. Requirements for Contracts and Certificates.**

Each enrollee is entitled to a contract or certificate that has been filed with the commissioner. A contract or certificate shall be mailed by the Organization to the enrollee as soon as practicable after coverage is effective.

A. Benefits and Services in the Service Area. The contract and certificate shall contain a specific description of benefits and services available within the service area.

B. Cancellation or Termination. The contract and evidence of coverage shall contain the condition upon which cancellation or termination may be effected by the Organization or the enrollee.

C. Claims. The contract and certificate shall contain procedures for filing claims that include:

(1) Any required notice to the Organization;

(2) If any claim forms are required, how, when and where to obtain and submit them;

(3) Any requirements for filing proper proofs of loss;

(4) Any time limit of payment of claims;

(5) Notice of any requirement for resolving disputed claims including arbitration; and

(6) A statement of restrictions, if any, on assignment of sums payable to the enrollee by the Organization.

D. Complaint System and Arbitration. The contract and certificate shall contain a description of the Organization's method for resolving enrollee complaints, incorporating procedures to be followed by the enrollee in the event any dispute arises under the contract, including any requirements for arbitration.

E. Conversion Privilege. The contract and certificate shall contain a conversion provision which provides each enrollee the right to convert and/or extend coverage to a contract as set forth in Chapter 22 of Title 31A, Part VII. To obtain the conversion contract, an enrollee may submit a written application and applicable premium payment to the Organization within 30 days after the date the enrollee's eligibility for coverage terminates.

F. Coordination of Benefits. If the contract contains a coordination of benefit clause then the contract and certificate shall contain the rules for coordination of benefits.

G. Copayment, Limitations, and Exclusions. The contract and certificate shall contain a description of any copayments, limitations or exclusions on the services or benefits to be provided, including any copayments, limitations or exclusions due to preexisting conditions, waiting periods or an enrollee's refusal of treatment.

H. Eligibility Requirements for Enrollees. The contract and certificate shall contain eligibility requirements indicating the conditions that must be met to enroll and continue to remain enrolled as an enrollee or eligible dependent, the limiting age for enrollees and eligible dependents.

I. Emergency Care Services. The contract and certificate shall contain a specific description of benefits and services available for emergencies 24 hours a day, seven days a week, including disclosure of any restrictions on emergency care services. No contract or certificate may limit the coverage of emergency services in the service area to affiliated providers only.

J. Entire Contract. The contract shall contain a statement that the contract, all applications, and any amendments thereto shall constitute the entire agreement between the parties. No portion of the charter, bylaws or other document of the Organization shall be part of such contract unless set forth in full in the contract or attached thereto.

K. Grace Period. The contract and certificate shall provide for a grace period of not less than 30 days for the payment of premium during which the coverage shall remain in effect. During the grace period, the Organization shall remain liable for providing the services and benefits contracted for, the contract holder shall remain liable for the payment of the premium for the time coverage was in effect during the grace period, and the enrollee shall remain liable for any copayments owed.

L. Information sources. The contract and certificate shall contain the name, address and telephone number of the Organization, and where and in what manner information is available as to how services may be obtained. A toll free phone number within the service area for calls, without charge to enrollees, to the Organization's administrative office shall be made available and disseminated to enrollees to adequately provide telephone access for enrollee's problems or questions.

M. Limited Coverage. Any Organization that proposes to issue a policy that does not provide all of the basic health care services shall state prominently in the policy and certificate that the coverage is limited.

N. Out-of-Area Benefits and Services. The contract and certificate shall contain a specific description of benefits and services available out of service area.

O. Referral Services. The contract and certificate shall specify procedures for referring enrollees to licensed providers outside the Organization.

P. Reinstatement. The contract and certificate shall contain the conditions for, and any restrictions upon, the enrollee's right to reinstatement if applicable.

Q. Renewal. The contract and certificate shall contain the conditions for, and any restrictions upon, the enrollee's right to renewal.

R. Term of Coverage. The contract and certificate shall contain the time and date or occurrence upon which coverage takes effect, including any applicable waiting periods, or describe how the time and date or occurrence upon which coverage takes effect is determined.

The contract and certificate shall contain the time or occurrence upon which coverage will terminate.

In general, the term of coverage will be for a period of one year or until the next enrollment period, whichever is less.

**R590-76-6. Prohibited Practices.**

A. Preexisting Conditions

1. An Organization may include in its contract a provision setting forth reasonable exclusions or limitations of services for preexisting conditions at time of enrollment. However, no such exclusions or limitations may be for a period greater than one year.

2. No Organization may exclude or limit services for a preexisting condition when the enrollee transfers coverage from one Health Maintenance Organization contract to another or when the enrollee converts coverage under his conversion option, except to the extent of a preexisting condition limitation or exclusion remaining unexpired under the prior contract. Any required probationary or waiting period shall be deemed to have commenced on the effective date of coverage under the prior Health Maintenance Organization contract. The Organization contract shall disclose any preexisting condition limitations or exclusions that are applicable when an enrollee transfers from

a prior HMO contract.

3. A preexisting condition may not be defined more restrictively than the following:

(a). Existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care, or treatment in a one year period before the effective date of coverage under the health care plan; or

(b). A condition for which medical advice or treatment was recommended by a physician or received from a physician in a two year period before the effective date of coverage under the health care plan.

B. Termination of Coverage

1. No Organization may cancel or terminate coverage of services provided an enrollee under an Organization contract except for one or more of the following reasons:

(a) failure of the enrollee and the health care provider to establish a satisfactory patient-provider relationship if (i) it is shown that the Organization has, in good faith, provided the enrollee the opportunity to select an alternate provider, or (ii) the enrollee has repeatedly refused to follow the plan of treatment ordered by the physician or provider;

(b) fraud or material misrepresentation in enrollment or in use of services or facilities;

(c) failure to meet continued eligibility requirements under a group contract, provided a conversion option is offered; and

(d) the enrollee no longer resides in the service area.

(e) failure of the enrollee to pay any deductible or copayment charges.

2. A group contract may be terminated for these reasons:

(a) nonpayment of premium;

(b) The Organization has provided the group with at least 30 days written notice of its intention not to renew on the anniversary date;

(c) The group has given notice to the organization in accordance with contract provisions;

(d) material fraud or misrepresentation on the part of either the Organization or the group;

3. Coverage may not be canceled or terminated on the basis of the status of the enrollee's health nor on the fact the enrollee has exercised his or her rights under the Organization's complaint system by registering a complaint against the Organization.

4. No Organization shall cancel an Organization contract or terminate an enrollee's coverage for services provided under an Organization contract without giving the enrollee written notice of termination. In the event that termination is effected under R590-76-6(B)(1)(a)(c)(d) or (e) the Organization shall provide at least 30 days advance notice of termination. In the event that termination is effected under R590-76-6(B)(1)(b) or R590-76-6(B)(2)(d) the termination may be effective three (3) days after the mailing of notice to the enrollee at the enrollee's address recorded in the enrollment records of the Organization. In the event that termination is effected because of nonpayment of premium, written notice shall be given the enrollee at least 10 days prior to the expiration of the grace period.

5. No Organization shall provide in their contracts or certificates anything that does not comply with Section 31A-22-611.

C. Unfair Discrimination

No Organization shall unfairly discriminate against any enrollee or applicant for enrollment on the basis of age, sex, race, color, creed, national origin, ancestry, religion, material status, or lawful occupation of an enrollee, or because of the frequency of utilization of services by an enrollee. However, nothing shall prohibit an Organization from setting rates or establishing a schedule of charges in accordance with relevant actuarial data.

No Organization may expel an individual enrollee of a group solely on the basis of the health status or health care needs of the individual enrollee.

D. Solicitation.

No Organization may solicit enrollees who live and work outside the service area.

**R590-76-7. Services.**

A. Access to Care

(1) An Organization shall establish and maintain adequate arrangements to provide the health services contracted for by its enrollees including:

(a) reasonable proximity to the business or personal residences of the enrollees as specified in R590-76-4(M) of this Rule;

(b) reasonable hours of operation and after-hours services;

(c) emergency care services available and accessible within the service area 24-hours a day, seven days a week; and

(d) sufficient providers and personnel, including administrators and support staff, to assure all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of the enrollees.

(2) An Organization shall assure that care which is covered under a group or individual contract is reasonably and continuously available to enrollees in the service area during the term of the contract.

B. Basic Health Care Services

An Organization shall be able to provide or arrange for the provision of, as a minimum, basic health care services, as defined in R590-76-4(B).

C. Out of Area Services and Benefits

The out of area services and benefits shall be as provided for and restricted by the enrollee's contract and/or certificate.

D. Supplemental Health Care Services. In addition to the basic health care services in R590-76-7(B) of this section, an Organization may offer to its enrollees any supplemental health care services it chooses to provide. Limitations as to the extent of coverage and copayments may vary from those applicable to basic health care services.

E. Referred Care. An Organization is responsible to the enrollee for the costs of services provided by a non-contracted provider when the enrollee was referred to that provider by a contracted provider without the preauthorization of the HMO. The amount of the costs of services shall be limited to the amount the HMO would have paid under its contract to a preauthorized non-contracted provider. The Organization is not responsible for these costs if it can prove that the enrollee and/or the contracted provider knowingly and willfully violated the preauthorization policies of the Organization. It is recommended that Organizations establish written referral forms that contain the preauthorization instructions.

**R590-76-8. Grievance Procedure.**

A. The Organization shall have a written grievance procedure which shall be sent to each enrollee at the time of enrollment and each time the methods and procedures are substantially changed. The Organization shall designate to whom the grievance should be directed, with alternate persons available if the grievance involves the designated person.

B. The Organization's Medical Director or a physician designee must review all grievances of a medical nature.

C. Each grievance shall be answered in writing within 30 days of submittal, with the reply directed to the enrollee who initiated the grievance.

D. All grievance files shall be retained by the Organization for a period of not less than five years and be available for examination by the commissioner and the director.

E. If a grievance cannot be resolved to the enrollee's satisfaction, the Organization must notify the enrollee of his options, i.e., litigation, arbitration, etc.

**R590-76-9. Provider Contracts.**

All provider contracts must be on file and available for review by the commissioner and the director.

**R590-76-10. Quality Assurance.**

Each Organization shall develop a quality assurance plan which is subject to the approval of the director. The plan shall be designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems. The director shall use the following approval criteria to assess the quality assurance plan.

A. Qualifications of Personnel

Health care services specified in the contract and certificate may be delivered through providers who have signed contracts with the Organization as outlined in R590-76-9 of this Rule.

B. Certification of Quality Assurance Plan

(1) Each Organization shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months from the effective date of this Rule and at least every three years thereafter. Each new Organization shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months after receiving a Certificate of Authority and commencing operation, and every three years thereafter.

(2) The review shall be conducted by a professionally recognized expert or entity in the area of quality assurance programs for Organizations. Reviews conducted for the federal government shall satisfy the requirements of this subsection if the requirements of subsections (2), (3), and (4) are also met.

(3) Each Organization shall arrange for the Director to receive a copy of the review findings, recommendations, and certification (or notice of nonapproval) of the quality assurance plan. This material shall be sent directly from the certifying entity to the Director. Certification status and review materials will be treated confidentially by the Director.

(4) Each Organization shall be prepared to implement the substantive clinical and procedural recommendations made by the certifying entity within reasonable time after the findings are received by the Organization and the Director.

(5) The Organization shall comply with reasonable requests for information required for the external review, including, if available on site at the Organization, an original or copy of patient medical records which would be reviewed only by the Director or external review agency, and information necessary to:

(a) measure health care outcomes according to established medical standards;

(b) evaluate the process of providing or arranging for the provision of patient care;

(c) evaluate the system the Organization uses to conduct concurrent reviews and preauthorized medical care;

(d) evaluate the system the Organization uses to conduct retrospective reviews of medical care.

(e) evaluate the accessibility and availability of medical care provided or arranged for by the Organization.

C. Internal Peer Review

The Organization shall show written evidence of continuing internal peer reviews of medical care given. The program must provide for review by physicians and other health professionals; have direct accountability to senior management; and have resources specifically budgeted for quality assessment, monitoring, and remediation.

**R590-76-11. Reporting Requirements and Fee Payments.**

Section 31A-4-113 and 31A-3-103 apply to HMOs and Limited Health Plans. Both types of entities shall submit their annual reports on the National Association of Insurance Commissioner's blanks that have been adopted for Health Maintenance Organizations. In addition, all HMOs shall submit the information asked for in the annual statistical report required by the Department of Health. The annual statement blank will be filed with the Insurance Department and the Utah Health Department by March 1st of each year.

**R590-76-12. Financial Condition.**

A. Allowable Assets. In determining the financial condition of any Organization, only the following may be allowed as assets:

(1) Cash in the possession of the Organization or in transit under its control, and the balance of any deposit of the Organization in a solvent financial institution or trust company;

(2) Investments, securities, properties, and loans acquired or held in accordance with this regulation and income due or accrued thereon;

(3) Premiums in the course of collection, not more than 90 days past due, less commissions payable thereon (the foregoing limitation may not apply to amounts payable directly or indirectly by governmental or municipal agencies or any of their instrumentalities);

(4) Notes and like written obligations not past due, taken for premiums on contracts permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon;

(5) Medical, surgical, dental, and other equipment, fixtures, and furniture used in the provision or administration of health care;

(6) Prepaid charges on contracts with other organizations hospitals, or other person approved by the commissioner;

(7) Pharmaceutical and medical supply inventories;

(8) Accounts receivable for health care provided, not

including notes receivable, less adequate reserves for bad debts;

(9) Land and buildings owned or leased and occupied by the Organization which are used in the administration or provision of health care.

(10) Other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the provision of health care, at values to be determined by him/her.

B. Unallowable Assets. The following may not be allowed as assets in determining the Organization's financial condition:

(1) Goodwill, trade names, and other like intangible assets;

(2) Advances to officers, whether secured or not, and advances to employees or agents;

(3) Stock of such Organization, owed by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock through the ownership by such Organization of an interest in another firm, corporation or business unit;

(4) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the Organization exceeds the aggregate value thereof as determined by the values approved by the National Association of Insurance Commissioners;

(5) All assets not allowed and all other assets of doubtful value or character included in any statement by an Organization to the commissioner, or in any examiner's report to him, shall also be reported to the extent of the value disallowed, as deductions from the gross assets of the Organization.

C. Liabilities Chargeable Against Assets. In any determination of the financial condition of an Organization, liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any;

(2) The amount estimated not inconsistent with the provisions of this regulation, necessary to pay all its unpaid benefits and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement, whether reported or unreported;

(3) The amount of reserves equal to the unearned portions of the gross premiums charged on contracts in force, computed in accordance with this rule;

(4) Its other liabilities, including but not limited to taxes, expenses, and other obligations due or accrued at the date of the statement.

D. Earned Premium Income. Earned premiums shall include premiums charged on all contracts written, including all determined excess and additional premiums, less return premiums, less premiums returned or credited to enrollees as dividends, and less premium on canceled contracts, and less unearned premiums on contracts in force as shown by the Organization's Annual Report. With reference to health care contracts, every Organization shall maintain an unearned premiums reserve on all contracts in force, which reserve shall be set up as a liability. Premiums prepaid beyond 31 days shall be deemed unearned.

E. Investments. The quality of investments of Organizations shall be the same as required of life insurance companies within the State of Utah. The investments shall be income producing or interest bearing. Organizations may not acquire investments which are in default. An Organization shall diversify its investments to the extent that the deterioration of any one investment or classification of investments will not threaten the solvency of the Organization. The diversification requirement shall not apply to Federal Government securities or investments insured by the Federal Government or one of its agencies.

No investment in an affiliated company may qualify as an allowable asset of an Organization without the approval of the commissioner.

F. Liability Insurance. Evidence of adequate insurance or a plan for general and professional liability self-insurance approved by the commissioner, must be maintained by the Organization. All providers of health services on contract or on staff to the Organization must be covered by this liability insurance or show evidence of adequate professional liability insurance coverage as groups or individuals.

**R590-76-13. Filing Forms and Rates.**

Organizations shall be subject to the same procedures and requirements for filing forms and rates as other disability insurers.

**R590-76-14. Separability.**

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 law**
**1989** **31A-2-201**
**Notice of Continuation October 13, 1999**

**R590. Insurance, Administration.**
**R590-79. Life Insurance Disclosure Rule.**
**R590-79-1. Authority.**

This rule is adopted and promulgated pursuant to Section 31A-2-201, which empowers the Commissioner of Insurance to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Insurance Code.

**R590-79-2. Purpose.**

The purpose of this rule is to require insurers to deliver to purchasers of life insurance, information which will improve the purchaser's ability to select a plan of life insurance most appropriate for the purchaser's needs, improve the purchaser's understanding of the basic features of the policy being purchased or under consideration for purchase, and to improve the ability of the purchaser to evaluate the relative costs of similar plans of life insurance.

This rule does not prohibit the use of additional material which is not in violation of this rule or any other statute or rule.

**R590-79-3. Scope.**

Except as hereinafter exempted, this rule shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This rule shall apply to any issuer of life insurance contracts including fraternal benefit societies.

Unless otherwise specifically included, this rule shall not apply to:

A. Annuities.

B. Credit life insurance.

C. Group life insurance (except for disclosures relating to non-term group life insurance and preneed funeral contracts or prearrangements as provided herein. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

D. Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), as amended.

E. Variable life insurance under which the amount and duration of the death benefits and cash values vary according to the investment experience of a separate account, and which is subject to regulation by the Securities and Exchange Commission.

F. The provisions of this rule will take effect January 1, 1997.

**R590-79-4. Definitions.**

For the purposes of this rule, the following definitions shall apply:

A. Buyer's Guide. A Buyer's Guide is a document which contains, and is limited to, the language contained in the "1996 Life Insurance Buyer's Guide," as published by, and available from the National Association of Insurance Commissioners, 1996 edition, which is incorporated in this rule by reference.

B. Guaranteed Rate Schedule. The Guaranteed Rate Schedule is a schedule showing the maximum premiums that will be charged or the minimum cash values or death or other benefits that will be available, if there is no change in the basis of these items as guaranteed in the policy at the time of issue.

C. Equivalent Level Death Benefit. The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:

1. Accumulate the amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten and 20 years at 5% interest compounded annually to the end of the tenth and twentieth policy years respectively.

2. Divide each accumulation of Step 1 by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step 1 over the respective periods stipulated in Step 1. If the period is ten years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

D. Generic Name. Generic Name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

E. Cost Comparison Indexes.

1. Surrender Cost Comparison Index - Guaranteed Basis. The Surrender Cost Comparison Index - Guaranteed Basis - is calculated by applying the following steps, assuming that the company charges the maximum premiums and provides the minimum cash values and, provides the minimum death benefits allowed by the policy, and, if the policy is participating, pays no dividends.

a. Determine the cash surrender value, if any, available at the end of the tenth and twentieth policy years, based on the company's Guaranteed Rate Schedule.

b. Divide the result of Step a by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step a over the respective periods stipulated in Step a. If the period is ten years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

c. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider, based on the company's Guaranteed Rate Schedule, at 5% interest compounded annually to the end of the period stipulated in Step a and dividing the result by the respective factors stated in Step b. (This amount is the annual premium payable for a level premium plan.)

d. Subtract the result of Step b from Step c.

e. Divide the result of Step d by the number of thousands of the Equivalent Level Death Benefit, using the company's Guaranteed Rate Schedule to determine the amount payable upon death, to arrive at the Surrender Cost Comparison Index - Guaranteed Basis.

(2) Net payment Cost Comparison Index - Guaranteed Basis. The Net Payment Cost Comparison Index - Guaranteed Basis is calculated in the same manner as the comparable Surrender Cost Comparison Index - Guaranteed Basis, except that the cash surrender value and any terminal dividend are set at zero.

F. Policy Summary.

(1) For the purposes of this rule, Policy Summary means a written statement describing only the guaranteed elements of the policy. If an illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, is used in the sale of a policy, a policy summary does not have to be provided. A policy summary must include the following information:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.

(b) The name and address of the insurance agent, or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

(c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(d) The Generic Name of the basic policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the tenth and twentieth policy years, and at least one age from 60 through 65 or maturity, which ever is earlier.

(i) The annual premium for the basic policy.

(ii) The annual premium for each optional rider.

(iii) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(iv) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(v) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall indicate the maximum annual percentage rate, and shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

(g) The Cost Comparison Indexes for ten and 20 years but in no case beyond the premium paying period. Indexes shall be shown on the Guaranteed Basis. Separate indexes shall be displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor for the basic policies or optional riders covering more than one life.

(h) A statement in close proximity to the Cost Comparison Indexes that an explanation of the intended use of the indexes is provided in the Life Insurance Buyer's Guide.

(i) The date on which the policy summary is prepared.

(2) The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item F.(1)(e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and may not be displayed as a blank space.

G. Preneed Funeral Contract or Prearrangement. An agreement by or for an individual before that individual's death relating to the purchase or provisions of specific funeral or cemetery merchandise or services.

**R590-79-5. Disclosure Requirements.**

A. The insurer shall provide, to all prospective purchasers, a Buyer's Guide and either a policy summary or a life illustration, that is in compliance with Rule R590-177, Life Insurance Illustrations Rule, when the policy is delivered or prior to delivery of the policy if so requested.

B. The insurer shall provide a Buyer's Guide and a policy summary to any prospective purchaser upon request.

C. Flexible Premium and Benefit Policies. For policies commonly called "universal life insurance policies," which:

(1) Permit the policy owner to vary, independently of each other, the amount or timing of premium payments, or the amount payable on death; and

(2) Provide for a cash value that is based on separately identified interest credits and mortality and expense charges made to the policy.

All indexes and other data shall be displayed assuming specific schedules of anticipated premiums and death benefits at issue.

In addition to all other information required by this rule, the policy summary shall indicate when the policy will expire based on the interest rates and mortality rates and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the policy summary.

D. Preneed Funeral Contracts or Prearrangements. The following information shall be adequately disclosed at the time an application is made prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement as defined in Section 4(G) above which is funded or to be funded by a life insurance policy:

(1) The fact that a life insurance policy is involved or being used to fund a prearrangement;

(2) The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

(3) The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4) The impact on the prearrangement

(a) of any changes in the life insurance policy including but not limited to changes in the assignment, beneficiary designation or use of the proceeds;

(b) of any penalties to be incurred by the policyholder as a result of failure to make premium payments;

(c) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

(5) A list of the merchandise and services which are

applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

(7) Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee;

(8) The fact that a sales commission or other form of compensation is being paid and if so, the identity of such individuals or entities to whom it is paid.

**R590-79-6. General Requirements.**

A. Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use pursuant to this rule, and also to include the agent sales kit and all other sales promotion and marketing material. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

B. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name. A presentation commences with an initial contact with a prospective purchaser in person by telephone or by way of printed materials, particularly where rates or values are quoted or when policy or contract representations are made.

C. Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used unless properly licensed if required or in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case and represented by way of required disclosure.

D. A statement regarding the use of the Cost Comparison Indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

E. A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating the cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.

F. For life insurance policies with a death benefit not exceeding $10,000, the insurer shall provide disclosure of the following:

(1) limited death benefits whenever a policy limits death benefits during a period following the inception date of coverage;

(2) the possibility that premiums paid over several years may exceed the death benefit whenever that possibility exists.

The disclosure shall be provided to the applicant no later than delivery of the policy or certificate.

G. The policy summary, the life illustration that is subject to the requirements of R590-177, Life Insurance Illustrations Rule, and all other sales materials must be complete and not misleading. If asterisks are used to reference footnotes, the asterisk must be clear and easily seen.

H. For the purposes of this rule, the annual premium for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

**R590-79-7. Failure to Comply.**

Failure of an insurer to provide or deliver a Buyer's Guide and either a policy summary or life illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, as provided in this rule shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

**R590-79-8. Severability.**

If any provision of this rule or application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected.

**KEY: insurance law**
**May 1, 1998** **31A-2-201**
**Notice of Continuation October 13, 1999**

**R590. Insurance, Administration.**
**R590-83. Unfair Discrimination on the Basis of Sex or Marital Status.**
**R590-83-1. Authority.**

This rule is promulgated pursuant to Sections 31A-2-201(1) and (3)(a) in which the Commissioner is empowered to enforce Title 31A and to make rules to implement its provisions, and Section 31A-23-302(8) which empowers the commissioner to define and prohibit unfair marketing practices.

**R590-83-2. Purpose.**

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

**R590-83-3. Scope.**

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

**R590-83-4. Availability Requirements and Prohibited Transactions.**

Availability of any insurance contract may not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, condition or type of coverage may not be restricted, modified, excluded or reduced on the basis of the sex or marital status of the insured or prospective insured, except marital status may be considered for the purpose of defining eligibility for dependent or family coverage. An insurer may treat a polygamous relationship differently than a monogamous relationship for purposes of defining or providing dependent or family coverage provided that the treatment reflects reasonable treatment of the interests of the affected parties and safeguards the economic interests of the insurer and other policyholders or prospective policyholders. Any insurer or representative of an insurer acting in contravention of this rule shall be deemed to have engaged in an unfair or deceptive act or practice as provided by Chapter 23, Title 31A. Examples of the practices prohibited by this section include:

(a) denying, canceling or refusing to renew coverage, or providing coverage on different terms, because the insured or prospective insured is residing with another person not related by blood or marriage;

(b) offering coverage to males gainfully employed at home, employed part-time or employed by relatives while denying or offering reduced coverage to females similarly employed;

(c) reducing disability benefits for females who become disabled while not gainfully employed full-time outside the home when a similar reduction is not applied to males;

(d) denying females waiver of premium provisions that are available to males or offering the provisions to females only for contact limits that are lower than those available to males;

(e) refusing to offer maternity benefits to insureds or prospective insureds purchasing individual contracts when comparable family coverage contracts offer maternity benefits;

(f) denying, under group contracts, dependents coverage to husbands of female employees when dependent's coverage is available to wives of male employees;

(g) offering coverage to males in certain occupations while denying coverage or offering more limited coverage to females in the same occupational categories;

(h) offering males higher benefit levels or longer benefits periods, or both, than are offered to females in the same classifications;

(i) offering contracts containing different definitions of disability for females and males in the same classifications;

(j) offering contracts containing different waiting and elimination periods for females and males;

(k) requiring female applicants to submit to medical examinations while not requiring males to submit to the examinations for the same coverage;

(l) establishing different benefit options for females and males;

(m) denying to divorced or single persons coverage available to married persons;

(n) limiting the amount of coverage available to an insured or prospective insured based upon the person's marital status;

(o) denying employees of one sex insurance benefits that are offered to dependents who are of the same sex as the employees;

(p) denying a married or separated female the right to obtain or continue coverage in her own name when the same does not apply to males;

(q) establishing different issue age requirements for females and males;

(r) establishing different occupational classifications for females and males;

(s) denying coverage to unwed persons or their dependents, or both;

**R590-83-5. Class Rating Differentials.**

The establishment of reasonable and consistently applied class rating differentials does not constitute a practice prohibited by Section 4. This rule may not be deemed to prohibit charging different premium rates on the basis of sex.

**R590-83-6. Severability.**

If any provision of this rule is held invalid, it may not affect the provisions of this rule that can be given effect, and to that extent, the provisions of this rule are declared to be severable.

**KEY: insurance law**

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| **1989** | **31A-2-201** |
| **Notice of Continuation October 13, 1999** | **31A-2-211** |

**R590. Insurance, Administration.**
**R590-127. Rate Filing Exemptions.**
**R590-127-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to the general authority granted under Section 31A-2-201(3), to adopt rules for the implementation of the Utah Insurance Code, and pursuant to Section 31A-19-103, which specifically authorizes the commissioner to exempt any market segment from any or all of the provisions of Chapter 19 of Title 31A.

**R590-127-2. Purpose.**

Section 31A-19-203 requires that all insurers and rate service organizations to which Chapter 19 applies file all rates and supplementary rate information, which includes any manual or plan of rates, classification, rating schedule, rating rule, and rate-related underwriting rule, with the Insurance Commissioner within 30 days of the designated effective date. No exception is made in the statute for "(a) rates" or "refer to company" rates or rating plans for specialized or individual risks. All insurers using any of these types of rates or plans would be doing so in violation of the statute.

The purpose of this rule is to define these rates and plans, to make certain exemptions with regards to the filing requirements of Section 31A-19-203, and to establish certain procedures for that market segment which uses these types of rates or plans.

**R590-127-3. Scope.**

This rule applies to all insurers licensed to write liability insurance, professional liability insurance, property insurance, vehicle liability and physical damage insurance and workers' compensation insurance, as defined in Section 31A-1-103.

**R590-127-4. Definitions.**

This rule is concerned with terminology which is commonly used in the insurance industry but for which no decisive definitions have been established. To promote understanding, some explanation is required.

Manual classifications and rates are developed by pooling vast amounts of statistical data. They are, by nature, average. For many types of risks there does not exist enough statistical data to develop credible manual rates and classifications. Over time the industry has developed ways of dealing with these unaverage risks. The procedure for rating an exposure that does not have a published manual rate is termed "(a) rating". The term is derived from the fact that the manual contains the symbol "(a)" or the words "refer to company" opposite the applicable code number instead of a specific dollar and cent rate. There are generally three types of situations which require (a) rates: (1) For a class in which the risks are so different from each other that no single manual rate could be representative of all of them; (2) where a class does not develop enough experience to warrant any credibility for ratemaking purposes; or (3) risks that involve a new product or coverage for which there is no past experience nor appropriate analogy to similar exposures for ratemaking purposes.

For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, Section 31A-19-102, and in addition, the following:

(1) "(a) rate" means a rating rule or a rate expressed as the symbol "(a)" or the words "refer to company" listed opposite a classification code on the manual rule and rate pages of the Commercial Lines Manual.

(2) "(a) rating," special risk rating, means the procedure an underwriter uses for classifying and rating any risk which presents unique or unusual conditions, exposures or hazards for which he feels a commercial lines manual classification or rate is not appropriate.

(3) "Classification" means a group of risks having the same general risk characteristics which are grouped together for rating purposes.

(4) "Commercial Lines Manual" means the manual of rates, classifications and underwriting rules for commercial lines insurance, including the plan known as the Highly Protected Risk Plan, filed with the commissioner by the Insurance Services Office, Inc. For the purpose of this rule, this term shall include any similar rating plan or manual, including Highly Protected Risk Plans or large risk property rating plans, filed with the commissioner by other rate service organizations or individual insurers.

(5) "Excess Insurance" means a coverage designed to be in excess over one or more primary coverages or a Self-Insured Retention and which does not pay a loss until the loss amount exceeds a certain sum.

(6) "Guide (a) Rates" means advisory (a) rates that have been developed by rate service organizations or company home office underwriters. They represent a rough average and are used as guides or signposts.

(7) "Guide (a) Manual" means a collection of Guide (a) Rates with rules and procedures for their use.

(8) "Increased Limits Factor" means a rating factor used to adjust a manual rate to limits higher than the basic manual limits.

(9) "Individual Risk Filing" means a filing of the insurance policy of an individual risk which is submitted to the commissioner. It shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, the underwriter's explanation for the filing, premium development, and the appropriate filing fee.

(10) "Self-Insured Retention" means that portion of a risk or potential loss which is assumed by an insured. It may be in the form of a deductible, self-insurance, or no insurance. For the purpose of this rule, "self-insured retention" is limited to amounts of at least $50,000 or more.

(11) "Umbrella Liability Insurance" means a coverage basically affording high limit coverage in excess of the limits of the primary policies as well as additional liability coverages. These additional coverages are usually subject to a substantial self-insured retention. The term "umbrella" is derived from the fact that it is a separate policy over and above any other basic liability policies the insured may have.

**R590-127-5. Filing of Procedures.**

Each insurer to which this rule applies shall maintain our file with the commissioner a general statement of company policies and procedures for underwriting and developing (a) rates and (a) rating. This statement shall include a delineation

of the extent of home office and branch office authority with regards to the promulgation of (a) rates. This statement should include any formal guidelines established by the insurer for these situations. Any changes in general policy made subsequent to this initial filing will be subject to filing at the time of the change.

**R590-127-6. (a) Rates.**

(1) All (a) rates shall be exempt from the filing requirements of Section 31A-19-203.

(2) Whenever an (a) rate is used the underwriting file shall contain full and supporting factual documentation verifying that it is an (a) rate as defined and showing the development of the (a) rate assigned by the underwriter:

(a) if the insurer has a Guide (a) Manual, the underwriter must start with the Guide (a) Rate suggested in the manual. If the underwriter feels adjustments to the suggested rate are appropriate, he shall document the steps in the development of the adjusted rate and show that he has followed the insurer's established procedure in the (a) rate development;

(b) if no Guide (a) Rate is available, the underwriter shall document the steps in the development of the (a) rate. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria;

(c) as individual risk experience and characteristics are considered by the underwriter in developing the (a) rate, the only rate modification factors that may be applied to an (a) rate are Increased Limits Factors, package factors, premium size factors, expense modification factors and deductible factors. If automated rating procedures automatically apply other modification factors, this fact should be considered in the development of the initial rate.

(3) If an underwriter determines to use an Increased Limits Factor which is different from the Guide (a) Increased Limits Factors of the Commercial Lines Manual, the underwriting file shall contain full and supporting factual data justifying the change in the Guide (a) Increased Limits Factor.

(4) Whenever an insurer renews a risk which contains (a) rates the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rate assigned and justification for the continuation of the (a) rate or the development of any new (a) rate. If the (a) rate previously assigned is revised more than +/- 25%, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of the (a) rate development for the prior year and the development and explanation for the new (a) rate.

**R590-127-7. (a) Rating (Special Risk Rating).**

(1) Rates that are developed by an underwriter through an (a) rating process are exempt from the filing requirements of Section 31A-19-203.

(2) An underwriter is permitted to use (a) rating only in the following circumstances:

(a) When it can be clearly demonstrated that a risk described by specific classifications in the Commercial Lines Manual presents unique or unusual conditions of exposure or hazard such that the application of the normal manual rate for that classification does not produce a reasonable and equitable rate for the risk. The underwriter should bear in mind that manual classifications are understood to be general in nature and, thus, may not exactly describe the risk being considered. For this reason (a) rating is not to be used simply because the risk does not exactly match the manual classification description, but must be substantially different:

(b) when the coverage to be written is broader or more restricted than that provided for by the manual definition of coverage as limited by applicable manual exclusions;

(c) when the insurer has developed a program for types of risks or coverages that are not included in the Commercial Lines Manual and for which there is limited statistical data for ratemaking purposes; or

(d) when a risk develops more than $100,000 in annual manual basic limits unmodified premium for automobile liability, general liability, glass and theft insurance, individually, or $250,000 in any combination. Boiler and machinery risks may be (a) rated provided the one year deposit premium charged for the coverages afforded is $50,000 or more.

(3) Whenever an underwriter uses (a) rating (special risk rating) the underwriting file shall contain a full explanation showing that the risk fits one of the circumstances described in Subsection (2). The file shall also contain full and supporting factual documentation showing the development of the rates assigned by the underwriter. This development should contain an analysis of such things as the specific definable loss potential characteristics, a comparison to similar risks and their manual rates, available loss frequency and severity data, an analysis of current engineering reports, and any other pertinent underwriting criteria.

(4) Whenever an insurer renews a risk which has been (a) rated according to this section, the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rating and justification for the continuation of the (a) rating. Except for changes in premium basis, if the (a) rating produces a renewal premium which varies more than +/- 25% from the expiring policy premium, the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of the rate development for the prior term and the renewal term and an explanation for the change in premium.

**R590-127-8. Commercial Excess and Umbrella Liability Insurance.**

(1) Rates and rating plans for commercial excess insurance and umbrella liability insurance are exempt from the filing requirements of Section 31A-19-203.

(2) The underwriting files of all excess insurance and umbrella liability insurance risks must contain full and supporting factual documentation justifying the rate and showing the development of the rate. This development should contain an analysis of such things as the specific definable loss potential characteristics with regards to its excess exposure and any other pertinent underwriting criteria.

(3) Whenever an insurer renews a commercial excess or umbrella liability policy the underwriting file shall contain documentation of the underwriter's reevaluation of the rate assigned and justification for the continuation of the rate or the development of any new rate.

**R590-127-9. Penalties.**

Failure to comply with this rule and to maintain the documentation as outlined shall be deemed a violation of this rule. Pursuant to Section 31A-2-308, any person found to be in violation shall forfeit to the state not more than $1,000 for each violation.

**R590-127-10. Separability.**

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

**KEY: insurance companies**
**1989** **31A-2-201**
**Notice of Continuation October 14, 1999** **31A-19-103**

**R590. Insurance, Administration.**
**R590-129. Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment.**
**R590-129-1. Authority.**

This rule is promulgated pursuant to Sections 31A-2-201(1) and (3)(a) in which the commissioner is empowered to enforce Title 31A and to make rules to implement its provisions, and Section 31A-23-302(8) which empowers the commissioner to define and prohibit unfair marketing practices.

**R590-129-2. Purpose.**

The purpose of this rule is to identify and define certain practices which the commissioner finds are unfair and discriminatory.

**R590-129-3. Scope.**

This rule applies to all new or renewal insurance contracts offered for sale in Utah.

**R590-129-4. Prohibited Acts and Practices.**

The following acts and practices are prohibited:

1. refusing to insure or refusing to continue to insure;

2. limiting the amount, extent, or kind of coverage available to an individual; or

3. charging a higher rate for the same coverage solely because of blindness, partial blindness, or physical or mental impairment except where the refusal, limitation, or rate differential is based upon sound actuarial principles or reasonably anticipated loss experience.

Refusal to insure includes denial by an insurer of disability insurance coverage on the basis that the policy defines "disability" as being presumed in the event that the insured suffers the loss of sight. It is not a violation of this rule to exclude from coverage any disability consisting of blindness, partial blindness, physical or mental impairment when the condition existed at the time the policy was issued.

**KEY: insurance companies**

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| **1989** | **31A-2-201** |
| **Notice of Continuation October 13, 1999** | **31A-23-302** |

**R590. Insurance, Administration.**

**R590-146. Medicare Supplement Insurance Minimum Standards.**

**R590-146-1. Authority.**

This rule is issued pursuant to the authority vested in the commissioner under Subsection 31A-22-620(3)(c) requiring the commissioner to adopt rules to establish minimum standards for Individual and Group Medicare Supplement Insurance.

**R590-146-2. Purpose.**

The purpose of this rule is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

**R590-146-3. Applicability and Scope.**

A. Except as otherwise specifically provided in Sections 7, 12, 13, 16 and 21, this rule shall apply to:

(1) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this rule; and

(2) all certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

B. This rule shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination, of the labor organizations.

**R590-146-4. Definitions.**

For purposes of this rule:

A. "Applicant" means:

(1) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) in the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

E. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

F.(1) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(a) a group health plan;

(b) health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act, Medicare;

(d) Title XIX of the Social Security Act, Medicaid, other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 United States Code (CHAMPUS);

(f) a medical care program of the Indian Health Service or of a tribal organization;

(g) a State health benefits risk pool;

(h) a health plan offered under chapter 89 of Title 5 United States Code, Federal Employees Health Benefits Program;

(i) a public health plan as defined in federal regulation; and

(j) a health benefit plan under Section 5(e) of the Peace Corps Act, 22 United States Code 2504(e).

(2) "Creditable coverage" shall not include one or more, or any combination of, the following:

(a) coverage only for accident or disability income insurance, or any combination thereof;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for on-site medical clinics; and

(h) other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) "Creditable coverage" shall 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:

(a) limited scope dental or vision benefits;

(b) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) such other similar, limited benefits as are specified in federal regulations.

(4) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

(a) coverage only for a specified disease or illness; and

(b) hospital indemnity or other fixed indemnity insurance.

(5) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(b) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(c) similar supplemental coverage provided to coverage under a group health plan.

G. "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002, Employee Retirement Income Security Act.

H. "Insolvency" means that:

(a) an insurer is unable to pay its debts or meet its obligations as they mature;

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(7)(c); or

(c) an insurer is determined to be hazardous under this title.

I. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

J. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

K. "Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in Section 1859 found in Title IV, Subtitle A, Chapter 1 of P.L. 105-33, and includes:

(1) coordinated care plans which provide health care services, including but not limited to health maintenance organization plans, with or without a point-of-service option, plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and

(3) Medicare+Choice private fee-for-service plans.

L. "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

M. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

N. "Secretary" means the Secretary of the United States Department of Health and Human Services.

**R590-146-5. Policy Definitions and Terms.**

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section.

A. "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

Expenses shall not include:

(1) home office and overhead costs;

(2) advertising costs;

(3) commissions and other acquisition costs;

(4) taxes;

(5) capital costs;

(6) administrative costs; and

(7) claims processing costs.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

**R590-146-6. Policy Provisions.**

A. Except for permitted preexisting condition clauses as described in Subsections 7A(1) and 8A(1) of this rule, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use

waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.

**R590-146-7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to July 30, 1992.**

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover costsharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Subsection (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection 8B of this rule.

(c) If membership in a group is terminated, the issuer shall:

(i) offer the certificateholder the conversion opportunities described in Subsection (b); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible, $100;

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

**R590-146-8. Benefit Standards for Policies or Certificates Issued or Delivered on or After July 30, 1992.**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 30, 1992. No policy or certificate may be advertised, solicited, delivered or issued for

delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection 8A(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which, at the option of the certificateholder:

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this subsection.

(d) if an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificateholder the conversion opportunity described in Subsection 8A(5)(c); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) if a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Reinstitution of coverages:

(i) shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

B. Standards for Basic, Core, Benefits Common to All Benefit Plans.

Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services under a prospective payment system, the copayment amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this rule.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) 80% of the Medicare Part B Excess Charges: Coverage for 80% of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) 100% of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from Subsection (b) and patient education to address preventive health care measures.

(b) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(1) fecal occult blood test or digital rectal examination, or both;

(2) mammogram;

(3) dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(4) pure tone, air only, hearing screening test, administered or ordered by a physician;

(5) serum cholesterol screening, every five years;

(6) thyroid function test;

(7) diabetes screening.

(c) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster, every ten years.

(d) Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology, AMA CPT, codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided shall be primarily services which assist in activities of daily living.

(ii) The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) the actual charges for each visit up to a maximum

reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) seven visits in any one week;

(V) care furnished on a visiting basis in the insured's home;

(VI) services provided by a care provider as defined in this section;

(VII) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) home care visits paid for by Medicare or other government programs; and

(ii) care provided by family members, unpaid volunteers or providers who are not care providers.

(11) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

**R590-146-9. Standard Medicare Supplement Benefit Plans.**

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8B of this rule.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in Subsection 8C(11) and in Section 10 of this rule.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "J" listed in this section and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 8B and 8C and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the basic, core, benefits common to all benefit plans, as defined in Subsection 8B of this rule.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible as defined in Subsection 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Subsections 8C(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit, as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in an foreign country and the at-home recovery benefit as defined in Subsections 8C(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Subsections 8C(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8C(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8C(1), (2), (3), (5) and (8) respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 80% of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Subsections 8C(1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Subsections 8C(1), (2), (6) and (8) respectively.

(10) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare

Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Subsections 8C(1), (2), (5), (6), (8) and (10) respectively.

(11) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Subsections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively.

(12) Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Subsection 8B of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Subsections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

**R590-146-10. Medicare Select Policies and Certificates.**

A.(1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act, OBRA, of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this rule.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available 24 hours per day and seven days per week.

(e) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subsection shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) the formal organizational structure;

(b) the written criteria for selection, retention and removal of network providers; and

(c) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used

by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F.(1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after 30 days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) it is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) other Medicare supplement policies or certificates offered by the issuer; and

(b) other Medicare Select policies or certificates.

(2) A description, including address, phone number and hours of operation, of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M.(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs,

coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

**R590-146-11. Open Enrollment.**

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this section without regard to age.

B. Except as provided in Section 22, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

**R590-146-12. Guaranteed Issue for Eligible Persons.**

A. Guaranteed Issue

(1) Eligible persons are those individuals described in subsection B who apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subsection B, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection C that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons

An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply: there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of section 1851(e)(4) of the federal Social Security Act, which consists of the following:

"Effective as of January 1, 2002, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period under Medicare and make a new election under this section if:

(i) the organization's or plan's certification, under this part, has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(ii) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(iii) the individual demonstrates, in accordance with guidelines established by the Secretary, that:

(I) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) the organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iv) the individual meets such other exceptional conditions as the Secretary may provide."

(3) (a) The individual is enrolled with:

(i) an eligible organization under a contract under Section 1876, Medicare risk or cost;

(ii) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) an organization under an agreement under Section 1833(a)(1)(A), health care prepayment plan; or

(iv) an organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of Section 1851(e)(4)of the federal Social Security Act as delineated above in Section 12B(2).

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a)(i) of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) of other involuntary termination of coverage or enrollment under the policy;

(b) the issuer of the policy substantially violated a material provision of the policy; or

(c) the issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5)(a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently

enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876, Medicare risk or cost, any similar organization operating under demonstration project authority, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and

(b) The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment, during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act; or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare, enrolls in a Medicare+Choice plan under part C of Medicare, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

C. Products to Which Eligible Person are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsection 12B(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Subsection 12B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection C(1).

(3) Subsection 12B(6) shall include any Medicare supplement policy offered by any issuer.

D. Notification provisions

(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection 12A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

**R590-146-13. Standards for Claims Payment.**

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act, as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, OBRA, 1987, Pub. L. No. 100-203, by:

(1) accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) paying the participating physician or supplier directly;

(4) furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

**R590-146-14. Loss Ratio Standards and Refund or Credit of Premium.**

A. Loss Ratio Standards.

(1) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(i) at least 75% of the aggregate amount of premiums earned in the case of group policies; or

(ii) at least 65% of the aggregate amount of premiums earned in the case of individual policies; calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:

(a) the originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) the appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) when combined with actual experience beginning with the effective date of October 31, 1994 as set forth in Bulletin 94-8; and

(c) the appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

B. Refund or Credit Calculation

(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable

reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception, ratio 1, exceeds the adjusted experience ratio since inception, ratio 3, then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after the effective date of this rule. The first report shall be due by May 31, 1998.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of Premium Rates.

An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 30, 1992 in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(1)(a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings.

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of July 30, 1996 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

**R590-146-15. Filing and Approval of Policies and Certificates and Premium Rates.**

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

C.(1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) the inclusion of new or innovative benefits;

(b) the addition of either direct response or agent marketing methods;

(c) the addition of either guaranteed issue or underwritten coverage;

(d) the offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D.(1) Except as provided in Subsection (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this rule that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for

purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subsection (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this section.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Subsection (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

E.(1) Except as provided in Subsection (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule R590-146-14.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

**R590-146-16. Permitted Compensation Arrangements.**

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period and shall be provided for no fewer than five renewal years.

C. No issuer or other entity may provide compensation to its agents or other producers and no agent or producer may receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

**R590-146-17. Required Disclosure Provisions.**

A. General Rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or

certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(b) inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

C. Outline of Coverage Requirements for Medicare Supplement Policies.

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant; and

(2) if an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12 point type. All plans A-J shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The Outline of Medicare Supplement Coverage, from the National Association of Insurance Commissioners, dated 1998, as incorporated by reference herein, is available for public inspection at the Insurance Department.

D. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq., disability income policy; or other policy identified in Subsection 3B of this rule, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

**R590-146-18. Requirements for Application Forms and Replacement Coverage.**

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

TABLE I

(Statements)
(Boldface Type)

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

(5) Counseling services may be available in your state to

provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary(SLMB).

Questions
(Boldface Type)

To the best of your knowledge,
(1) Do you have another Medicare supplement policy or certificate in force?
(a) If so, with which company?
(b) If so, do you intend to replace your current Medicare supplement policy with this policy (certificate)?
(2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?
(a) If so, with which company?
(b) What kind of policy?
(3) Are you covered for medical assistance through the state Medicaid program:
(a) As a Specified Low-Income Medicare Beneficiary (SLMB)?
(b) As a Qualified Medicare Beneficiary (QMB)?
(c) For other Medicaid medical benefits?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than twelve point type:

TABLE II

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE

(Boldface Type)
(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.
(Boldface Type)

According to (your application) (information you have furnished), you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage.

You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.
STATEMENT TO APPLICANT BY ISSUER, AGENT (BROKER OR OTHER REPRESENTATIVE):
I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason(s) (check one):
..... Additional benefits.
..... No change in benefits, but lower premiums.
..... Fewer benefits and lower premiums.
..... Other. (please specify)

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

.....
(Signature of Agent, Broker or Other Representative)

(Typed Name and Address of Issuer, Agent or Broker)

.....
(Applicant's Signature)
.....
(Date)

Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice, applicable to preexisting conditions, may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

**R590-146-19. Filing Requirements for Advertising.**

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of

Insurance of this state for review or approval by the commissioner to the extent it may be required under state law.

**R590-146-20. Standards for Marketing.**

A. An issuer, directly or through its producers, shall:

(1) establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued.

(3) display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses"

(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance; and

(5) establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in Section 31A-23-302, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this rule.

**R590-146-21. Appropriateness of Recommended Purchase and Excessive Insurance.**

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

**R590-146-22. Reporting of Multiple Policies.**

A. On or before March 1 of each year, an issuer shall report the following information on the applicable reporting form contained in Appendix B for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) policy and certificate number; and

(2) date of issuance.

B. The items set forth above shall be grouped by individual policyholder.

**R590-146-23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates.**

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

**R590-146-24. Separability.**

If any provision of this rule or the application 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.

**KEY: insurance**
**October 21, 1999** **31A-22-620**
**Notice of Continuation May 7, 1997**

**R612. Labor Commission, Industrial Accidents.**
**R612-7. Procedural Guidelines for the Reemployment Act.**
**R612-7-1. Definitions.**

A. The definitions under Title 34A, Chapter 8 apply to this rule.

B. In addition to the foregoing definitions, all definitions in Rule R612-1 apply to this section.

**R612-7-2. Authority.**

This rule is enacted under the authority of Section 34A-8-111.

**R612-7-3. Procedural Guidelines.**

This rule is enacted to outline the procedural guidelines for the reemployment program.

**R612-7-4. Initial Status Report.**

Status Report - Form 206. When it appears that an injured worker is or shall be a disabled worker, or when the period of the injured worker's temporary total disability compensation period exceeds 90 days, whichever comes first, the employer or its workers' compensation insurance carrier shall, within 30 days thereafter file with the division and serve on the injured worker a Status Report. The report shall contain claimant demographics, insurance coverage details, and address the need for vocational assistance. The report shall also contain information regarding employer and employee expectations of return-to-work. In the event an injured worker returns to employment, or is deemed to have transferable skills but doesn't have a job to return to, the insurance carrier shall monitor the injured worker for sixty (60) days prior to closure to ensure transition into employment. If the injured worker is unsuccessful in a return to work effort, the issue of need for vocational assistance will then be addressed. A final 206 shall be submitted at the end of the monitoring period indicating whether the injured worker was successful or unsuccessful in a return to work effort.

**R612-7-5. Initial Assessment.**

An initial assessment shall be completed for injured workers who are unable to return to work in the same or similar occupation because of functional limitations, and for workers who have been unsuccessful in their return to work effort. The initial assessment shall be completed by a qualified rehabilitation provider and shall include the employee's work history, functional limitations, transferable skills analysis detailing a list of transferable skills and recommendations for viable job opportunities. The assessment shall be filed with the Reemployment Office within 120 days of the date of injury. For injured workers that have been unsuccessful in their return to work effort, the initial assessment shall be filed within 30 days after the determination.

**R612-7-6. Postponement.**

a. In the event an insurance carrier postpones an injured worker's status due to medical reasons, the insurance carrier shall submit a summary statement outlining the diagnosis and medical treatment plan, along with the Status Report (Form 206), documenting the need for postponement to the Reemployment Program. An updated summary of the medical status shall be provided by the insurance carrier every 90 days of postponement, or at the time the injured worker's status changes.

b. The potential for rehabilitation shall be addressed during the period of postponement, and the insurance carrier/rehabilitation provider shall identify possible work related activities and/or training options the injured worker might engage in to encourage return to work at the end of medical treatment, i.e., attaining their G.E.D., attending English as a second language (E.S.L.) classes, on-the-job training with an employer, or other work related activities. These work related activities or training options may be suggested to the injured worker, as an alternative to light duty during postponement, in the event light duty work is not available.

**R612-7-7. Administrative Review.**

The Request for Administrative Review (Form 207) shall be made available to the injured worker upon request. This form is completed when the employee wishes to contest the information/decision made by the carrier or employer on the Status Report (206) or initial assessment. In the event it is determined through Administrative Review that the employee has a valid dispute, the division may initiate a voluntary alternative dispute resolution conference between all parties involved, i.e., carrier, rehabilitation agency, medical personnel, employer, and employee.

**R612-7-8. Rehabilitation Progress Report.**

A Rehabilitation Progress Report (Form 208A) shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

**R612-7-9. Reemployment Plan.**

A Reemployment Plan (Form 209) shall be provided for injured workers who are identified on the initial assessment as needing reemployment assistance, due to an industrial accident or illness which creates a significant barrier preventing a return to the work force. Significant barriers include, but are not limited to: 1) impairment(s) resulting from the industrial accident(s) or illness which prevent the employee from performing the essential functions of the work activity for which the employee has been qualified until the time of the industrial accident; 2) lack of transferable skills; 3) education/training; and 4) age. The plan shall not be provided for those injured workers who have previously been screened out through Form 206. The report should contain a return-to-work plan outlining employee demographics, functional limitations, type of plan, specific job target or employment category, specific tasks, time frames for completion and costs. Parties responsible for carrying out each task shall be identified (i.e., employee, employer, qualified rehabilitation provider, and insurance carrier). The plan shall be completed by a qualified rehabilitation provider (as defined by

Section 34A-8-109) and filed within 30 days of the Initial Assessment.

**R612-7-10. Reemployment Plan Closure.**

Upon completion of the Reemployment Plan, a Reemployment Plan Closure Report (Form 210) shall be submitted to the division. The closure report shall detail costs in dollar amounts. The report shall also contain all the details on the return to work status of the employee.

**KEY: reemployment workers' compensation guidelines**
**June 15, 1995 34A-1-104**
**Notice of Continuation October 15, 1999 34A-8-109**

**R651. Natural Resources, Parks and Recreation.**
**R651-206. Carrying Passengers for Hire.**
**R651-206-1. Vessel Operator Permit.**

(1) As used in this rule: "Operator Permit" means a valid Utah Vessel Operator Permit issued by the division or a valid Coast Guard Motorboat Operator License. The operator permit must be accompanied by a current and original Standard American Red Cross First Aid Card or equivalent and a current and original American Red Cross or American Heart Association "CPR" card.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any lake or reservoir of this state unless the individual has in his possession an Operator Permit or is operating under Section R651-206-2.

(3) To obtain a Utah Vessel Operator Permit, the applicant must be at least 18 years old, complete the prescribed form, possess the required first aid and CPR certification, successfully complete a written examination, pay a $60 fee, and have 80 hours of experience in vessel operation, 20 hours of which was obtained operating an equivalent type and size of vessel which will be used for carriage of passengers. If the applicant fails to pass the written examination, there is a 7-day waiting period and a $15 retest fee per attempt.

(4) A Utah Vessel Operator Permit is valid for three years from date of issue, unless suspended or revoked.

(5) A Utah Vessel Operator Permit may be renewed up to six months prior to expiration, upon completion of the prescribed form, presentation of required first aid and CPR certification, and payment of a $45 fee. The renewed permit shall have the same month and day expiration date as the original permit.

(6) A Utah Vessel Operator Permit which has expired shall not be renewed but is required to obtain a new permit as outlined above.

(7) In the event a Utah Vessel Operator Permit is lost or stolen, a duplicate permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, payment of a $25 fee. An application for a duplicate permit must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Current Utah Vessel Operator Permit holders shall notify the Division, within 30 days, of any change of address.

(9) A Utah Vessel Operator Permit may be suspended or revoked 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 permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period; or

(d) the division determines that the permit holder intentionally provided false or fictitious statements or qualifications to obtain the permit.

(10) A person shall not operate an unfamiliar vessel carrying passengers for hire or operate on unfamiliar water unless there is an operator permit holder aboard who is familiar with the vessel and the water area.

(11) A valid Coast Guard Motorboat Operator License must be possessed if engaging in carrying passengers for hire on Bear Lake, Flaming Gorge, or Lake Powell.

**R651-206-2. River Guide Permit.**

(1) As used in this rule:

(a) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying a river guide's experience.

(b) "Certifying experience" means river running experience obtained within ten years of the date of application for the guide permit.

(c) "Guide 1" means a nonrestrictive river guide permit.

(d) "Guide 2" means a restricted river guide permit, which is valid only on other rivers.

(e) "Guide 3" means an apprentice river guide permit, which is valid only when the holder is accompanied on the white water river by a qualified Guide 1 permit holder. A Guide 3 permit is also valid on other rivers, but must be accompanied by either a Guide 1 or 2 permit holder.

(f) "Guide 4" means a restricted apprentice river guide permit, which is valid only on other rivers when the holder is accompanied on the trip by a qualified Guide 1 or 2 permit holder.

(g) "Guide permit" means a valid Guide 1, 2, 3, or 4 permit issued by the division for carrying passengers for hire. For a Guide 1 or 2 permit to be valid they must be accompanied by a current "Emergency Response" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. For a Guide 3 or 4 permit to be valid they must be accompanied by a current "Standard" American Red Cross First Aid Card or equivalent and an American Heart Association or an American Red Cross "CPR" Card. A photo copy of both sides of the required first aid and CPR certification cards is allowed.

(h) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak or similar vessel.

(i) "Other rivers" means all rivers, river sections, or both in Utah not defined in Subsection R651-202-2(1) as a whitewater river.

(j) "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.

(2) No person shall operate a vessel engaged in carrying passengers for hire on any river of this state unless that person has in his possession the appropriate valid river guide permit. For low capacity vessels not operated by but led by a guide permit holder, there shall be at least one qualified guide permit holder for every four low capacity vessels being led in the group.

(3) To qualify for a Guide 1 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current

in the required first aid and CPR certification, successfully complete a written examination, pay a $30 fee and have operated a vessel on at least nine whitewater river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a $15 retest fee per attempt.

(4) To qualify for a Guide 2 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, successfully complete a written examination, pay a $30 fee and have operated a vessel on at least six river sections. If the applicant fails to pass the written examination, there is a 7-day waiting period and a $15 retest fee per attempt.

(5) To qualify for a Guide 3 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a $20 fee and have operated a vessel on at least three whitewater river sections.

(6) To qualify for a Guide 4 permit, the applicant must be at least 18 years of age, complete the prescribed form, be current in the required first aid and CPR certification, pay a $20 fee and have operated a vessel on at least three river sections.

(7) Any person applying for a duplicate, renewal, or a new guide permit shall be employed by or be a prospective employee of an outfitting company currently registered with the division. The applicant shall be sponsored by that outfitting company, or be currently employed and sponsored by a federal, state or county agency. Permit applications must have original signatures and be accompanied by original documentation of required first aid and CPR certification.

(8) Guide 3 and 4 permits shall expire annually on December 31. Guide 1 and 2 permits shall expire three years from date of issuance.

(9) Guide 1 or 2 permits may be renewed up to six months prior to expiration upon completion of the prescribed form, presentation of current guide permit, required first aid and CPR certification, and payment of a $30 fee. The renewed permit shall have the same month and day expiration date as the original permit. Any Guide 1 or 2 permit holder whose permit has expired shall be required to obtain a new Guide 1 or 2 permit as outlined above.

(10) In the event a guide permit is lost or stolen a duplicate guide permit may be issued with the same expiration date as the original permit upon completion of the prescribed form, furnishing the required information as described in (7) above and payment of the required fee. The fee shall be $15 for a Guide 1 or 2 permit, and $15 for a Guide 3 or 4 permit.

(11) All boatman permits issued by the division are expired.

(12) Current Guide Permit holders shall notify the Division, within 30 days, of any change of address.

(13) A guide permit holder shall not carry passengers for hire on his first trip on an unfamiliar river unless there is a qualified Guide 1 or 2 permit holder aboard who has operated a similar vessel on that river segment.

(14) A guide permit may be suspended or revoked 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 guide permit holder is convicted of boating under the influence of alcohol or any drug, or refuses to submit to any chemical test which determines blood or breath alcohol content;

(b) the guide permit holder's negligence causes personal injury or death as determined by due process of the law;

(c) the guide permit holder is convicted of three violations of Title 73 Chapter 18 or rules promulgated thereunder during a three-year period;

(d) the division determines that the guide permit holder intentionally provided false or fictitious statements or qualifications to obtain the guide permit; or

(e) a guide permit holder has utilized a private river trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation.

(15) Every outfitting company carrying passengers for hire on any river of this state shall register with the division annually prior to commencement of operation. The registration requires the completion of the prescribed form and providing the following: evidence of registration with the Department of Commerce, evidence of river trip authorization from the appropriate controlling state or federal agency, and payment of a $200 fee.

(16) The agent shall certify and guarantee that each river guide sponsored by the outfitting company that he represents has obtained the necessary experience, as required above, depending on the type of guide permit applied for.

(17) An outfitting company's division registration may be suspended or revoked 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 outfitting company's or agent's negligence caused personal injury or death as determined by due process of the 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 guide 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) an outfitting company has utilized a private river trip permit for carrying passengers for hire and have been prosecuted by the issuing agency and found guilty of the violation; or

(f) the outfitting company used a guide without a valid guide permit or without the appropriate guide permit while engaging in carrying passengers for hire.

**KEY: boating**
**October 12, 1999** **73-18-4(4)**
**Notice of Continuation February 10, 1997**

**R651. Natural Resources, Parks and Recreation.**
**R651-601. Definitions as Used in These Rules.**
**R651-601-1. Division.**
"Division" means the Division of Parks and Recreation, Department of Natural Resources.

**R651-601-2. Ranger.**
"Ranger" means any employee of the Division who is designated by the Director or his designee as a peace officer as defined in Section 53-13-103.

**R651-601-3. Division Representative.**
"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

**R651-601-4. Natural and Cultural Resources.**
"Natural and Cultural Resources" means those features and values including all lands, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on any park area.

**R651-601-5. Park System.**
"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

**R651-601-6. Park Area.**
"Park area" means any individual park property in the park system.

**R651-601-7. Manager.**
"Manager" means the Division representative in charge of a park area.

**R651-601-8. Permission.**
"Permission" means oral or written authorization by a park representative.

**R651-601-9. Permit.**
"Permit" means written authorization by a park representative.

**R651-601-10. Posted.**
"Posted" means displayed printed instruction or information.

**R651-601-11. Person.**
"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-602. Aircraft and Powerless Flight.**
**R651-602-1. Landing or Taking Off.**

The landing or taking off of aircraft within the park system other than at designated landing areas is prohibited.

**R651-602-2. Air Delivery or Pickup.**

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

**R651-602-3. Powerless Flight Launching and Landing.**

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-603. Animals.**
**R651-603-1. Pets.**

(1) All pets are prohibited in park areas unless caged, or physically controlled on a six foot maximum leash, or confined to the inside of a vehicle.

(2) Pet owners are responsible for picking up and properly disposing of all fecal matter.

**R651-603-2. Animal Exclusions.**

All animals are prohibited from public buildings, bathing beaches and adjacent waters, eating places and any other trails or locations posted closed to pets within the park system, except for guide or service dogs as authorized by Section 26-30-2.

**R651-603-3. Unattended Animal.**

Leaving any animal unattended is prohibited except by permit.

**R651-603-4. Dangerous Animals.**

Vicious, dangerous, or noisy animals of any kind are prohibited within the park system.

**R651-603-5. Wildlife.**

Feeding, touching, teasing, molesting, or intentionally disturbing any wildlife is prohibited except as approved for authorized hunting and trapping activities (see R651-614).

**R651-603-6. Livestock.**

Allowing livestock to graze or be on any lands within the park system is prohibited except by permit.

**R651-603-7. Hitching or Tying Animals.**

Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

**R651-603-8. Horse Use on Trails.**

Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

**R651-603-9. Horse Use within a Park.**

Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-606. Camping.**
**R651-606-1. Permit Required for Camping in Undeveloped Areas.**

No person shall camp in undeveloped locations of a park area without proper permit.

**R651-606-2. Reserved Campsites may not be Taken.**

No person shall occupy or otherwise use a campsite when it is occupied or reserved for another person.

**R651-606-3. Maximum Occupancy of Campsites.**

Unless authorized by a park representative, individual campsites shall not be occupied by more than two vehicles and eight persons.

**R651-606-4. Payment Required before Occupancy of Campsite.**

No person shall occupy camping facilities prior to payment of required fees.

**R651-606-5. Time-Limit in Campsite may not be Exceeded.**

No person shall exceed the limitation on the length of time persons may camp within a park area as approved in the park system fee schedule (see R651-611).

**R651-606-6. Use of Showers.**

Showers may only be used by campers with camping or shower authorization permits and only in accordance with posted restrictions.

**R651-606-7. Camping only in Designated Areas.**

All persons shall park or camp only in areas designated for those purposes.

**R651-606-8. Time by which Campsites shall be Vacated.**

All persons shall vacate the campsite by 2:00 p.m. of the last day of the camp permit.

**R651-606-9. Clean-up of Campsite Required.**

All persons shall remove all personal property, debris and litter prior to departing the site.

**R651-606-10. Quiet Hours.**

No person shall violate the 10 p.m. to 7 a.m. park area quiet hours.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-607. Disorderly Conduct.**
**R651-607-1. Applicability of the Utah Criminal Code.**

Offenses against persons and property shall be handled through the Utah Criminal Code.

**R651-607-2. Restricted Activities.**

No person shall participate in a posted restricted activity.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-608. Events of Special Uses.**
**R651-608-1. Permit Requirements.**

A special assembly, exhibit, public speech, public demonstration, or special activity or use (in this Rule collectively called "event") shall be by special use permit ("permit").

(1) REQUESTS. The person or group desiring to conduct an event shall request a permit from the local park manager, region or the Division's main office at least 30 business days before the proposed event. Late requests may be accepted subject to the terms of subsection (4) below.

(2) REQUIREMENTS. The Division director or his designee shall have the discretion to grant or deny the request for permit. A permit may be granted only on the following requirements: (a) No event may substantially interrupt the safe and orderly operation of the park or facility; (b) No event may unduly interfere with proper fire, police, ambulance or other life-safety protection or service to areas where the activity will take place or areas contiguous thereto; (c) No event may be reasonably likely to cause injury to persons or property; (d) No event may be held for the primary purpose of advertising the goods, wares or merchandise of a particular business establishment or vendor; (e) No event may involve pornographic or obscene materials or performances, or materials harmful to minors, as those terms are used in the Utah criminal code or in applicable local ordinances; and (f) liability insurance will be required, co-insuring the Division.

(3) CONFLICTING REQUESTS.

(a) Considerations. When two or more persons, groups or organizations request to use a park or facility for events that conflict as to time, place, or purpose, the Division director or his designee shall evaluate: (i) the size, nature and purpose of each event; (ii) each event's historical or traditional use of the park or facility; (iii) the date and time each conflicting request was received by the Division: (iv) whether an event would require Division support services; (v) possible alternative places or times for the conflicting events; and (vi) other factors that would resolve the conflicts, protect the public safety, health, and welfare, or assist the Division in regulating the time, place, and manner of the events.

(b) Disposition. After obtaining the relevant information and weighing the relevant considerations stated in the immediately preceding paragraph, the Division director or his designee shall resolve the conflict (i) by the parties' agreement to modify the requests to avoid conflicts and accommodate the public interest; or (ii) if no voluntary agreement is reached, by ordering the time, place, and manner for each requested event; or (iii) by exercising his discretion to deny one or more or all of the requests.

(4) LATE REQUESTS. When a request for permit is not timely made under subsection (1), the request shall state the grounds for its untimeliness. If the Division director or his designee determines that the untimeliness should be excused because of exigency, unexpected circumstances, or other reasons, the request shall be processed.

(5) APPEALS. There shall be no right to administrative appeal of the decision granting or denying a request for permit.

**R651-608-2. Events Prohibited without Permit.**

Conducting or participating in any event is prohibited unless the proper permit has been obtained in advance.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-610. Expulsion.**
**R651-610-1. Violation of Rules.**

Any person or persons who are in violation of any rules promulgated under Section 63-11-17 may be expelled from the park area by a ranger or other peace officer, and prohibited from returning for 48 hours.

**KEY: parks, fees**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-612. Firearms, Traps and Other Weapons.**
**R651-612-1. Weapons Prohibited.**

Possession or use of firearms, including air and gas powered types, traps and all other devices capable of launching a projectile which could immobilize, injure, or kill any person or animal or damage property are prohibited in the park system unless:

(1) The weapon or device is unloaded and cased or otherwise packed away to prevent its use in the park area.

(2) The weapon or device is being used for the legal pursuit of wildlife, see R651-614, or in accordance with UCA 53-5-701 Concealed Weapons Act.

(3) The weapon or device is being used by authorized enforcement officers in the performance of their official duties.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-614. Fishing, Hunting and Trapping.**
**R651-614-1. Applicability of the Utah Fish and Game Code.**

Fishing, hunting and trapping shall be in accordance with the Utah Fish and Game Code, with the following provisions.

**R651-614-2. Fishing near Public Areas.**

Fishing from or within 100 feet of any public float designed for water sports, developed beaches, public loading docks, or boat ramps is prohibited.

**R651-614-3. Ice Fishing.**

Ice fishing is prohibited in areas posted closed by the park manager.

**R651-614-4. Hunting Wildlife.**

Hunting of any wildlife is prohibited within the boundaries of all park areas except those designated open as follows:

(1) Antelope Island State Park - By special permit only
(2) Coral Pink Sand Dunes State Park - small game
(3) Deer Creek State Park - small game and waterfowl
(4) East Canyon State Park - small game
(5) Gunlock State Park - small game
(6) Huntington State Park - waterfowl
(7) Hyrum State Park - small game
(8) Jordanelle State Park - big and small game and waterfowl
(9) Minersville - waterfowl
(10) Quail Creek State Park - waterfowl
(11) Rockport State Park - waterfowl
(12) Scofield State Park - waterfowl
(13) Starvation State Park - big and small game
(14) Steinaker State Park - waterfowl, falconry between October 15 and April 14 annually.
(15) Pioneer Trail, Mormon Flat Unit - big and small game
(16) Wasatch Mountain State Park - big and small game
(17) Yuba State Park - small game

**R651-614-5. Hunting with Firearms.**

Hunting with rifles and handguns on park areas designated open is prohibited within one mile of all park area facilities, including, but not limited to buildings, camp/picnic sites, overlooks, golf courses, boat ramps and developed beaches. Shotguns and archery equipment are prohibited within one-quarter mile of above stated areas.

**R651-614-6. Trapping.**

All trapping on park areas is prohibited except when authorized and permitted by the park manager.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-615. Motor Vehicle Use.**
**R651-615-1. Traffic Rules and Regulations.**

The use and operation of motor vehicles in general shall be in accordance with the Utah Traffic requirements as found in Title 41, Chapter 6 Utah Code.

**R651-615-2. Blocking and Restricting Normal Use.**

Blocking, restricting or otherwise interfering with the normal use of any park facility with a vehicle or towed device is prohibited.

**R651-615-3. Roadway and Parking Areas.**

Operating or parking a motor vehicle or trailer except on roadways and parking areas developed for that use is prohibited.

**R651-615-4. Entering and Leaving Park Site.**

Operating a motor vehicle in a developed park area for any purpose other than entering or leaving the site is prohibited.

**R651-615-5. Off Road Use.**

The operation of vehicles off road is prohibited within the boundaries of all park areas except those with designated off-highway vehicle riding areas.

**R651-615-6. Off-Highway Vehicles.**

Operation of off-highway vehicles is prohibited on all park area roads unless authorized in accordance with the provisions of the Utah Off-Highway Vehicle Act.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-617. Permit Violation.**
**R651-617-1. Revocation or Suspension of Permit.**

A permit may be revoked or suspended for seven (7) days by a park representative if one of the following occurs: (1) false or fictitious statements or qualifications were provided to obtain the permit; (2) the terms or conditions of the permit were violated; (3) the permit holder allowed the permit to be used by an unauthorized person. In addition, the division director or individual designated by the division director may revoke or suspend the permit for an additional length of time.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-619. Possession of Alcoholic Beverages or Controlled Substances.**
**R651-619-1. Possession of Alcohol and Controlled Substances.**

Offenses for the possession or use of any alcoholic beverage or controlled substance, shall be handled through Utah Code, Titles 32A, 41, 58, 73 and 76.

**R651-619-2. Alcohol in Buildings.**

Possession and consumption of any alcoholic beverage in park system visitor centers, museums and administration offices is prohibited.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-620. Protection of Resources Park System Property.**
**R651-620-1. Applicability of Criminal Code.**

Offenses against capital improvements, natural and cultural resources will normally be handled through the Utah Criminal Code.

**R651-620-2. Plants, Soil, or Minerals.**

The digging, removing, or possessing, or destruction of any plant, soil, or minerals is prohibited except when authorized by permit.

**R651-620-3. Tossing, Throwing, or Rolling of Rocks and other Materials.**

The tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains is prohibited.

**R651-620-4. Firewood.**

Collecting or cutting of firewood is prohibited without a permit.

**R651-620-5. Glass Containers.**

Use or possession of glass containers on posted bathing beaches, adjacent waters and lawn areas is prohibited.

**KEY: parks**
**October 4, 1999 63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-622. Rock Climbing.**
**R651-622-1. Permit Required for Technical Rock Climbing.**
Technical rock climbing is prohibited without a permit.

**R651-622-2. Installation of Hardware/Equipment.**
Installation of new or the removal of existing, permanently installed technical rock climbing equipment or hardware is prohibited without a permit.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-624. Sanitation.**
**R651-624-1. Garbage and Rubbish.**

Disposing of garbage and rubbish of any kind other than at points or places designated for the disposal of materials is prohibited.

**R651-624-2. Trailer Refuse or Waste.**

Draining or dumping refuse or wastes from any trailer or other vehicle except in places or receptacles provided for that use is prohibited.

**R651-624-3. Cleaning and Washing at Hydrants.**

Cleaning food or washing clothing or articles of household use at campground hydrants is prohibited.

**R651-624-4. Fish Cleaning.**

Cleaning fish at campground hydrants or any other facility not specifically designed for that purpose is prohibited. All fish entrails or other inedible fish parts shall be disposed of in an appropriate fish cleaning station or trash can.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-627. Swimming.**
**R651-627-1. Prohibited Swimming Areas.**

Swimming is prohibited for safety issues, in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

**R651-627-2. Scuba Diving.**

Scuba diving shall only be participated in when in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

**R651-627-3. Public Health Closures.**

Swimming is prohibited when a public health closure has been posted by the park manager or other public health agency.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-628. Trails and Walks.**
**R651-628-1. Bicycles and Motor Vehicles.**

Bicycling, rollerblading, roller skating, skateboarding, or operating motor vehicles on any trail or walk not specifically designated and posted for that purpose is prohibited.

**R651-628-2. Interference with Normal Use of Trails and Walks.**

Blocking, restricting, or otherwise interfering with the normal use of any trail is prohibited.

**R651-628-3. Must Stay on Walks and Designated Trails.**

Persons are required to stay on walks and designated trails in posted areas.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-630. Unsupervised Children.**
**R651-630-1. Children under 16 must be Supervised.**

Allowing children under 16 years of age to be unsupervised within the park system is prohibited.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**
**Notice of Continuation June 29, 1999**

**R651. Natural Resources, Parks and Recreation.**
**R651-633. Special Closures or Restrictions.**
**R651-633-1. Emergency Closures or Restrictions.**

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager to protect public safety or park resources.

**R651-633-2. General Closures or Restrictions.**

Persons are prohibited from being in a closed area or participating in a restricted in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 26-30-2;

(4) Jordan River State Park - Possession or consumption of any alcoholic beverage is prohibited except at the Jordan River Par 3 Golf Course;

(5) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 26-30-2;

(6) Palisade State Park - Cliff diving is prohibited;

(7) Red Fleet State Park - Cliff diving is prohibited; and

(8) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) Jenny's Canyon Trail is closed annually from March 20 to June 1,

(c) Johnson's Arch Canyon access is closed annually from March 2 to November 14 by permit or guided walk, the canyon is open from November 15 to March 1,

(d) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 26-30-2.

**KEY: parks**
**October 4, 1999** **63-11-17(2)(b)**

**R657. Natural Resources, Wildlife Resources.**
**R657-5. Taking Big Game.**
**R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

**R657-5-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Permit" for purposes of this rule means a secondary document which:

(i) requires a wildlife habitat authorization as a prerequisite to its issuance; and

(ii) grants authority to engage in specific activities under the Wildlife Resources Code or a rule or proclamation of the Wildlife Board.

(n) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(o)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(p) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(q) "Wildlife Habitat Authorization" for purposes of this rule means the primary document granting authority to engage in activities under:

(a) the Wildlife Resources Code; or

(b) a rule or proclamation of the Wildlife Board.

**R657-5-3. Wildlife Habitat Authorization, License, Permit, and Tag Requirements.**

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

**R657-5-4. Age Requirements and Restrictions.**

(1)(a) A person 14 years of age or older may purchase a wildlife habitat authorization, and permit and tag to hunt big game. A person 13 years of age may purchase a wildlife habitat authorization, and permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the wildlife habitat authorization, permit and tag are issued.

(b) A person must purchase a wildlife habitat authorization prior to obtaining a permit and tag to hunt big game.

(2)(a) A person 15 years of age or younger must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are

maintained for the purposes of advising and assisting.

**R657-5-5. Duplicate License, Wildlife Habitat Authorization and Permit.**

Whenever any unexpired license, wildlife habitat authorization, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, wildlife habitat authorization or permit, whichever is less.

**R657-5-6. Companion Hunting.**

(1) A person may take a deer or elk for a person who is legally blind or quadriplegic provided the blind or quadriplegic person:

(a) meets hunter education requirements as provided in Section 23-19-11;

(b) purchases a wildlife habitat authorization and the appropriate permit and tag;

(c) obtains a certificate of registration from the division; and

(d) is accompanied by a companion hunter who has obtained a wildlife habitat authorization and has completed a division approved hunter education course as provided in Section 23-19-11.

(2) A person who is legally blind may obtain a certificate of registration from the division by submitting a signed statement by a licensed ophthalmologist, optometrist, or physician verifying that the applicant:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision 20 degrees or less.

(3) A person who is quadriplegic may obtain a certificate of registration from the division by submitting a signed statement by a licensed physician verifying that the applicant is quadriplegic.

(4) The blind or quadriplegic person must be accompanied by the companion hunter at the time of kill and while transporting the deer or elk.

**R657-5-7. Special Season Extension for Disabled Persons.**

(1) A certificate of registration may be obtained from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is quadriplegic;

(b) meets hunter education requirements as provided in Section 23-19-11; and

(c) obtains a wildlife habitat authorization and the appropriate permit and tag.

**R657-5-8. Hunting Hours.**

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

**R657-5-9. Temporary Game Preserves.**

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game using a shotgun with no larger than number four shot during the upland game season;

(b) livestock owners protecting their livestock; or

(c) peace officers in the performance of their duties.

**R657-5-10. Prohibited Weapons.**

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

**R657-5-11. Rifles and Shotguns.**

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only number 4 or larger buckshot or slug ammunition.

**R657-5-12. Handguns.**

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet, has a barrel length of 6 inches or longer, and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet, has a barrel length of 6 inches or longer, and develops 500 foot-pounds of energy at 100 yards.

**R657-5-13. Muzzleloaders.**

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has iron sights or a fixed, 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 21 inches; and

(e) is capable of being fired only once without reloading.

(2)(a) A 170 grain or larger bullet, including sabots must be used for taking deer and pronghorn.

(b) A 210 grain or larger bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game using a shotgun with shot no larger than 4 during the upland game season;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt; or

(iii) livestock owners protecting their livestock.

**R657-5-14. Archery Equipment.**

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow; except as provided in Section R657-5-15.

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw; or

(d) a release aid that is not hand held or that supports the draw weight of the bow.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game using a shotgun with shot no larger than 4 during the upland game season;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt; or

(iii) livestock owners protecting their livestock.

**R657-5-15. Crossbows.**

(1)(a) A disabled person who has a permanent, physical disability may use a crossbow to hunt deer or elk during the respective archery hunt dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, provided that person:

(i) applies for and obtains a certificate of registration authorizing the use of a crossbow; and

(ii) provides a physician's statement confirming the disability as defined in Subsection (b).

(b) "Disabled person" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment.

(2)(a) Any crossbow used to hunt deer must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be at least 18 inches long and must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring.

(3) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4) A cocked crossbow may not be carried in or on a vehicle.

**R657-5-16. Areas With Special Restrictions.**

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game may not be authorized to hunt on Indian reservation and trust lands. Hunters must observe tribal regulations concerning wildlife while hunting on Indian reservation and trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(b) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house, or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

**R657-5-17. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife.

**R657-5-18. Use of Vehicle or Aircraft.**

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

**R657-5-19. Party Hunting and Use of Dogs.**

(1) A person may not take big game for another person, except as provided in Section R657-5-6.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

**R657-5-20. Big Game Contests.**

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes worth more than $500.

**R657-5-21. Tagging.**

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

**R657-5-22. Transporting Big Game Within Utah.**

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

**R657-5-23. Exporting Big Game From Utah.**

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

**R657-5-24. Purchasing or Selling Big Game or Their Parts.**

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only between February 15 through August 9;

(b) Untanned hides of legally taken big game may be purchased or sold only between August 20 through February 15;

(c) tanned hides of legally taken big game may be purchased or sold at any time; and

(d) shed antlers and horns may be purchased at any time.

(2) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(3) Subsection (2) does not apply to scouting programs or other charitable organizations using untanned hides.

**R657-5-25. Possession of Antlers and Horns.**

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully purchased as provided in Section R657-5-24; or

(c) shed antlers or horns.

(2) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle

process.

(3) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

**R657-5-26. Poaching-Reported Reward Permits.**

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt in the following year for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(3)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(4)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(5) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

**R657-5-27. Bucks, Bulls, and Once-In-A-Lifetime Application -Deadlines.**

(1) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and Rule R657-42.

(2) Applications are available from license agents and division offices.

(3) A resident may apply in the bucks, bulls and once-in-a-lifetime drawing for the following permits:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-66(2)(b); and

(c) general muzzleloader elk (ML300).

(4) A nonresident may apply in the bucks, bulls and once-in-a-lifetime drawing for the following permits:

(a) only one of the following species:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - limited entry and muzzleloader; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit; and

(c) general archery, general season or general muzzleloader buck deer; and

(d) general muzzleloader elk (ML300).

(5) A wildlife habitat authorization may be purchased before applying, or the wildlife habitat authorization will be issued to the applicant upon successfully drawing a permit.

(6)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(7) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(8) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-30(4) and R657-5-32(1).

**R657-5-28. Fees for Bucks, Bulls and Once-In-A-Lifetime Applications.**

(1) Each application must include:

(a) the permit fee for any nonresident general permit applied for;

(b) the highest permit fee of any other permits applied for;

(c) a $5 nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(d) a $5 nonrefundable handling fee for a once-in-a-lifetime permit; and

(e) a $5 nonrefundable handling fee for any nonresident general permit applied for; and

(f) the wildlife habitat authorization fee, if it has not yet been purchased.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

**R657-5-29. Applying as a Group.**

(1)(a) Up to four people may apply together for deer, elk or pronghorn permits.

(b) Up to ten people may apply together for nonresident general deer permits.

(2) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5) When applying as a group:

(a) if one applicant is successful in drawing a permit, then all applicants with valid applications in that group are successful;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

**R657-5-30. Bucks, Bulls and Once-In-A-Lifetime Drawing.**

(1) Bucks, bulls, and once-in-a-lifetime drawing results are posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center and division offices on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or cooperative wildlife management unit buck deer;

(b) a limited entry, cooperative wildlife management unit or muzzleloader bull elk; or

(c) a limited entry or cooperative wildlife management unit buck pronghorn.

(4) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas, except nonresident general deer permits and resident cooperative wildlife management unit permits.

**R657-5-31. Bucks, Bulls and Once-In-A-Lifetime Application Refunds.**

(1)(a) Unsuccessful applicants who applied in the initial drawing and who applied with a check or money order will receive a refund in May.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order, will receive a refund in June.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

**R657-5-32. Permits Remaining After the Bucks, Bulls and Once-In-A-Lifetime Drawing.**

(1) Permits remaining after the bucks, bulls, and once-in-a-lifetime drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents, except residents may not purchase nonresident general deer permits and nonresidents may not purchase resident cooperative wildlife management unit permits.

(2) Applications are available from division offices and license agents.

(3) The same application form used for the bucks, bulls and once-in-a-lifetime big game drawing must be used when applying for remaining permits by mail. The handling fees are nonrefundable.

**R657-5-33. Waiting Periods for Deer.**

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the bucks, bulls and once-in-a-lifetime drawing process during the preceding two years may not apply in the bucks, bulls and once-in-a-lifetime drawing for any of

these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the bucks, bulls and once-in-a-lifetime drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, antlerless deer, conservation, sportsman and poaching-reported reward deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

**R657-5-34. Waiting Periods for Elk.**

(1) A person who obtained a limited entry or cooperative wildlife management unit bull elk permit through the bucks, bulls and once-in-a-lifetime drawing process during the preceding four years may not apply in the bucks, bulls and once-in-a-lifetime drawing for any of these permits during the current year.

(2) A person who obtains a limited entry or cooperative wildlife management unit bull elk permit through the bucks, bulls and once-in-a-lifetime drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general season, muzzleloader (ML300), antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman and poaching-reported reward elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

**R657-5-35. Waiting Periods for Pronghorn.**

(1) A person who obtained a buck pronghorn permit through the bucks, bulls and once-in-a-lifetime drawing process in the preceding four years, may not apply in the bucks, bulls and once-in-a-lifetime drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the bucks, bulls and once-in-a-lifetime drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

**R657-5-36. Waiting Periods for Antlerless Moose.**

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

**R657-5-37. Waiting Periods for Once-in-a-Lifetime Species.**

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat through the bucks, bulls and once-in-a-lifetime drawing or from a private landowner may not apply for a once-in-a-lifetime permit for the same species in the bucks, bulls and once-in-a-lifetime drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

**R657-5-38. Waiting Periods for Permits Obtained After the Drawing.**

(1) Waiting periods provided in Sections R657-5-33 through R657-5-36 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

**R657-5-39. Cooperative Wildlife Management Unit Permits and Landowner Permits.**

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the bucks, bulls and once-in-a-lifetime drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

**R657-5-40. Bonus Point System.**

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for permits in the bucks, bulls and once-in-a-lifetime drawing; or

(ii) each valid application when applying for bonus points in the bucks, bulls and once-in-a-lifetime drawing.

(b) Bonus points are awarded by species.

(c) Bonus points are awarded for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; and

(iv) all once-in-a-lifetime species.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and Cooperative Wildlife Management unit;

(ii) bull elk - limited entry and Cooperative Wildlife Management unit; or

(iii) buck pronghorn - limited entry and Cooperative Wildlife Management unit; and

(b) only one once-in-a-lifetime, including once-in-a-lifetime Cooperative Wildlife Management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(d) A person may only apply for bonus points on the initial Bucks, Bulls and Once-In-A-Lifetime drawing.

(e) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the general drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more people apply together on a group application.

(11) Bonus points are tracked using social security numbers or division-issued hunter identification numbers. Applicants who do not include this number or include an incorrect number on the application will not collect a bonus point.

**R657-5-41. General Archery Buck Deer Hunt.**

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit may use archery equipment to take:

(a) one buck deer within the general hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(c) a deer of hunter's choice within the Uintah Basin extended archery area.

(3) A person who obtains a general archery buck deer permit for any hunt area may hunt within the Wasatch Front and Uintah Basin extended archery areas.

(4) A person who has obtained a Northern Region general archery buck deer permit may take a deer of hunter's choice within the Northern Region general hunt area.

(5) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(6) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

**R657-5-42. General Season Buck Deer Hunt.**

(1) The dates for the general season buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general season buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general season buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

**R657-5-43. General Muzzleloader Buck Deer Hunt.**

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(4) Hunter orange fluorescent material must be worn if a

centerfire rifle hunt is also in progress in the same area. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

**R657-5-44. Limited Entry Buck Deer Hunts.**

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general season buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

**R657-5-45. Antlerless Deer Hunts.**

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

**R657-5-46. General Archery Elk Hunt.**

(1)(a) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The San Juan unit east of U.S. 191 is closed to general archery and general season bull elk hunting.

(2)(a) A general archery elk permit allows a person using archery equipment to take one elk of hunter's choice in a general season elk unit, except on elk cooperative wildlife management units.

(b) On a spike bull elk unit, archers may take an antlerless elk or a spike bull elk.

(c) In Salt Lake County south of I-80 and east of I-15, archers may take an antlerless elk or any bull elk.

(3) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

(4) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

**R657-5-47. General Season Bull Elk Hunt.**

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15 is restricted to muzzleloaders and shotguns with slug ammunition only;

(b) elk cooperative wildlife management units are closed; and

(c) the San Juan unit east of US-191 is closed.

(2)(a) General season elk hunters may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

**R657-5-48. General Muzzleloader Elk Hunt.**

(1) To hunt during the general muzzleloader elk hunt, a hunter must obtain a general muzzleloader elk permit.

(2) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15;

(b) elk cooperative wildlife management units; and

(c) the San Juan unit east of US-191.

(3)(a) A person who has obtained a general muzzleloader elk permit may take one elk of hunter's choice, except a hunter may take only a spike bull or an antlerless elk in a spike bull unit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may hunt only on a spike bull elk unit and may take only a spike bull elk. Any bull units are closed to spike bull permittees.

(4) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

**R657-5-49. Limited Entry Bull Elk Hunt.**

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry elk permit.

(2) A person who has obtained a limited entry elk permit may use any legal weapon to take one bull elk within the hunt area and season specified on the permit, except cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

(4)(a) A hunter who draws a limited entry bull elk permit may also purchase a permit to hunt using archery equipment beginning 15 days prior to the date specified on the limited entry elk permit, except in the Panguitch Lake, Mt. Dutton, Fillmore, Plateau, Monroe, Southwest Desert, Pilot Mountain portion of Box Elder, Beaver and muzzleloader (ML300) elk permit units.

(b) If an elk is not taken during this 15 day period, any legal weapon may be used during the dates specified on the limited entry bull elk permit.

**R657-5-50. Antlerless Elk Hunts.**

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b)provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

**R657-5-51. Buck Pronghorn Hunts.**

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt, only archery equipment may be used.

**R657-5-52. Doe Pronghorn Hunts.**

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

**R657-5-53. Antlerless Moose Hunts.**

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

**R657-5-54. Bull Moose Hunts.**

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

**R657-5-55. Bison Hunts.**

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison within the area and season as specified on the permit.

(4)(a) A mandatory wildlife orientation course for the Antelope Island Hunt is held on Antelope Island Park Headquarters.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation. Hunt fees include the handling fee, permit, and transportation on the island. Permittees are required to use these contract services. Permittees are required to furnish their own living quarters and food during their stay.

(c) Individuals accompanying the permittee must pay an additional fee and provide their own reliable four-wheel drive vehicle. Prior arrangements need to be made through the Division of Parks and Recreation.

(5) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

**R657-5-56. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.**

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters must have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

**R657-5-57. Rocky Mountain Goat Hunts.**

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) Any goat may be legally taken, however, permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters must have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) Successful hunters must report the harvest to a division office within 72 hours of leaving the hunting area.

**R657-5-58. Depredation Hunter Pool Permits.**

(1) When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters are called from a list of unsuccessful permittees or other resident hunters who have applied for depredation hunts.

(3)(a) Application does not affect eligibility for antlerless or other type hunts. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional antlerless permit for that species during the same year except as provided in Subsection R657-5-50(4).

(b) Hunters with depredation permits for doe pronghorn or antlerless deer and elk may not possess any other permit for those species, except hunters may possess a buck deer permit and a depredation antlerless deer permit.

(4) The division may contact hunters to participate in a depredation hunt prior to the general hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or pronghorn permit may purchase an appropriate permit.

(5) Applications must be sent to the appropriate regional division office for the area requested.

(6) Applications must be received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

**R657-5-59. Antlerless Application - Deadlines.**

(1) Applications are available from license agents and division offices.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) Any person who has obtained any elk permit, a pronghorn permit, or a moose permit may not apply for an antlerless elk permit, doe pronghorn permit, or antlerless moose permit, respectively, except as provided in Section R657-5-63.

(5) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-61(3) and R657-5-63(4).

(6) A Wildlife Habitat Authorization may be purchased before applying, or the Wildlife Habitat Authorization will be issued to the applicant upon successfully drawing a permit. The Wildlife Habitat Authorization number or the fee must be submitted with the application.

(7)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications may be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

**R657-5-60. Fees for Antlerless Applications.**

(1) Each application must include:

(a) the permit fee for each species applied for;

(b) a $5 nonrefundable handling fee for each species applied for; and

(c) the Wildlife Habitat Authorization fee, if it has not yet been purchased.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) All payments must be made payable to the Utah Division of Wildlife Resources.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

**R657-5-61. Antlerless Big Game Drawing.**

(1) The antlerless drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

**R657-5-62. Antlerless Application Refunds.**

(1)(a) Unsuccessful applicants, who applied in the initial drawing and who applied with a check or money order will receive a refund in September.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order will receive a refund in October.

(2)(a) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for in accordance with Section R657-5-29(5).

(3) The handling fees are nonrefundable.

**R657-5-63. Drawing for Remaining Antlerless Permits and Over-the-counter Permit Sales After the Antlerless Drawings.**

(1) The list of remaining permits will be available by the date provided in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Residents and nonresidents may apply for, and draw any of the following remaining permits, except as provided in Subsection (3):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Any person who has obtained:

(a) an antlerless deer permit may not apply for an antlerless deer permit;

(b) two elk permits may not apply for an antlerless elk permit;

(c) a pronghorn permit may not apply for a doe pronghorn permit; or

(d) a moose permit may not apply for an antlerless moose permit.

(4) Residents and nonresidents may apply for any remaining permits.

(5) The same application form used for the antlerless drawing must be used when applying for remaining permits. The handling fees are nonrefundable.

(6) Applications for remaining permits must be mailed by the date prescribed in the Antlerless Addendum to the Bucks,

Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(7) Applicants who apply for remaining permits will not be provided an opportunity to correct a rejected or invalid application on the drawing for remaining antlerless permits.

(8) Permits remaining after both drawings will be sold over-the-counter, in person, or through the mail, on a first-come, first-served basis only at the Salt Lake division office beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

**R657-5-64. Application Withdrawal.**

(1) A person may withdraw their application for the bucks, bulls and once-in-a-lifetime drawing or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(3) A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(4) Handling fees will not be refunded.

**R657-5-65. Special Hunts.**

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

**R657-5-66. Special Hunt Application - Deadlines.**

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A wildlife habitat authorization may be purchased before applying, or the wildlife habitat authorization will be issued to the applicant upon successfully drawing a permit.

(4)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(5) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-40. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(6) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-65 through R657-5-70.

**R657-5-67. Fees for Special Hunt Applications.**

(1) Each application must include:

(a) the permit fee for the species applied for;

(b) a $5 nonrefundable handling fee; and

(c) the wildlife habitat authorization fee, if it has not yet been purchased.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

**R657-5-68. Special Hunt Drawing.**

(1) The special hunt drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big

game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

**R657-5-69. Special Hunt Application Refunds.**

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

**R657-5-70. Permits Remaining After the Special Hunt Drawing.**

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

**R657-5-71. Obtaining Vouchers to Purchase Resident Southern Region General Deer Permits.**

(1)(a) A person must obtain a resident Southern Region General Deer Voucher before purchasing a resident Southern Region general deer permit.

(b) Only persons who possess a valid resident Southern Region General Deer Voucher are eligible to purchase a resident Southern Region general deer permit. Vouchers are nontransferable

(2)(a) Resident Southern Region General Deer vouchers may be obtained at any Division satellite office on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A list of Division satellite offices will be available at license agents and Division offices by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person may obtain up to four Southern Region General Deer Vouchers by providing the following information for each person for whom the person obtains a voucher:

(a) name;

(b) address;

(c) date of birth; and

(d) proof of hunter education, if born after December 31, 1965.

(4) Valid resident Southern Region General Deer Vouchers may be redeemed for a resident Southern Region general deer permit beginning on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(5) Duplicate resident Southern Region General Deer Vouchers will not be issued. If a voucher is lost, a person must purchase their resident Southern Region general deer permit from a Division regional office after computer verification from the Division that the person obtained a resident Southern Region General Deer Voucher.

**KEY: wildlife, game laws, big game seasons***

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| **October 16, 1999** | **23-14-18** |
| **Notice of Continuation June 23, 1997** | **23-14-19** |
| | **23-16-5** |
| | **23-16-6** |

**R657. Natural Resources, Wildlife Resources.**
**R657-9. Taking Waterfowl, Wilson's Snipe and Coot.**
**R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 1999 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Wilson's snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

**R657-9-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area and/or for more than one species for which a combined daily bag limit is prescribed.

(b) "Aggregate possession limit" means the maximum number of migratory game birds of a single species or combination of species taken in the United States permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area for which a possession limit is prescribed. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the species or specified geographic areas in which taking and possession occurs.

(c) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(d) "Baited area" means any area on which shelled, shucked or unshucked corn, wheat or other grain, salt or other feed has been placed, exposed, deposited, distributed or scattered, if that shelled, shucked or unshucked corn, wheat or other grain, salt or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take migratory game birds. Any such area will remain a baited area for ten days following the complete removal of all such shelled, shucked or unshucked corn, wheat or other grain, salt or other feed.

(e) "Baiting" means the direct or indirect placing, depositing, exposing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take migratory game birds.

(f) "CFR" means the Code of Federal Regulations.

(g) "Closed season" means, for purposes of this rule , the days on which migratory game birds shall not be taken.

(h) "Daily bag limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(i) "Live decoys" means tame or captive ducks, geese or other live birds.

(j) "Migratory game birds" means those migratory birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, for which open seasons are prescribed in this part and belong to the following families:

(i) Anatidae (ducks, geese, including brant, and swans);

(ii) Columbidae (doves and pigeons);

(iii) Gruidae (cranes);

(iv) Rallidae (rails, coots, and gallinules); and

(v) Scolopocidae (woodcock and snipe).

(k) "Nontoxic shot" means soft iron, steel, copper-plated steel, nickel-plated steel, zinc-plated steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tin and any other shot types approved by the U.S. Fish and Wildlife Service. Lead, nickel-plated lead, copper-plated lead, copper and lead/copper alloy shot have not been approved.

(l) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(m) "Open season" means, for purposes of this rule, the days on which migratory game birds may lawfully be taken. Each period prescribed as an open season shall be construed to include the first and last days thereof.

(n) "Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from one's temporary or transient place of abode or dwelling, such as a hunting club, or any cabin, tent or trailer house used as a hunting club or any hotel, motel or rooming house used during a hunting, pleasure or business trip.

(o) "Possession limit" means the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(p) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(q) "Transport" means to ship, export, import or receive or deliver for shipment.

(r) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(s) "Youth" means a person 12 to 15 years of age.

**R657-9-3. Stamp Requirements.**

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird stamp is not required for any person 12 through 15 years of age.

**R657-9-4. Permit Applications for Swan.**

(1) Applications for swan permits are available from license agents and division offices. Residents and nonresidents may apply.

(2)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot. Late applications will be returned unopened.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(3) A person may obtain only one swan permit each year

(4) A person may not apply more than once annually.

(5) Group applications are not accepted.

(6) A Wildlife Habitat Authorization and small game or combination license may be purchased before applying, or the Wildlife Habitat Authorization and small game or combination license will be issued to the applicant upon successfully drawing a permit. The Wildlife Habitat Authorization number or the fee must be submitted with the application.

(7) Each application must include:

(a) a $5 nonrefundable handling fee;

(b) the Wildlife Habitat Authorization fee, if it has not yet been purchased; and

(c) the small game or combination license fee, if it has not yet been purchased.

(9)(a) Personal checks, cashier's checks, money orders and credit cards are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) All payments must be made payable to the Utah Division of Wildlife Resources.

(10) Credit cards must be valid at least 30 days after the drawing results are posted.

(11) Handling fees are charged to the credit card when the application is processed.

(12)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division charges a returned check collection fee for any checks returned unpaid from the bank.

(10)(a) A license or permit shall be legally deemed invalid if payment is not received for that license or permit, or a check is returned unpaid from the bank or the credit card is invalid or refused and a person has received the license or permit.

(b) Hunting with a license or permit where payment has not been received for that license or permit constitutes a violation of hunting without a valid license or permit.

**R657-9-5. Drawing.**

(1)(a) Drawing results are posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center and division offices on the date published in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(2) Licenses and permits are mailed to successful applicants.

(3) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot.

(4) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(5) An applicant may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(6) Handling fees will not be refunded.

**R657-9-6. Tagging Swans.**

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

**R657-9-7. Return Questionnaire with Hunt Information.**

(1) Within ten days of the conclusion of the prescribed hunting season, the questionnaire included with the permit must be filled out with the required information and mailed to the division.

(2) This questionnaire must be returned regardless of success.

(3) The division requires hunters to submit swan parts or other biological data.

(4) Failure to return information, swan parts or biological data may affect eligibility to apply for permits next year.

**R657-9-8. Purchase of License and Wildlife Habitat Authorization by Mail.**

(1) A person may purchase a Wildlife Habitat Authorization and license by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

**R657-9-9. Firearms.**

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

**R657-9-10. Nontoxic Shot.**

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

**R657-9-11. Use of Firearms on State Waterfowl Management Areas.**

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;

(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

(j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession.

**R657-9-12. Airborne, Terrestrial, and Aquatic Vehicles.**

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

**R657-9-13. Airboats.**

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

**R657-9-14. Motorized Vehicle Access.**

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are confined to those areas open to the use of airboats, and as marked and posted.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

**R657-9-15. Sinkbox.**

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

**R657-9-16. Live Decoys.**

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

**R657-9-17. Amplified Bird Calls.**

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

**R657-9-18. Baiting.**

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing,

distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

**R657-9-19. Possession During Closed Season.**

No person shall possess any freshly killed migratory game birds during the closed season.

**R657-9-20. Live Birds.**

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

**R657-9-21. Waste of Migratory Game Birds.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

**R657-9-22. Termination of Possession.**

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

**R657-9-23. Tagging Requirement.**

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

**R657-9-24. Donation or Gift.**

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

**R657-9-25. Custody of Birds of Another.**

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

**R657-9-26. Species Identification Requirement.**

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

**R657-9-27. Marking Package or Container.**

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

**R657-9-28. Migratory Bird Preservation Facilities.**

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

**R657-9-29. Importation.**

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during

any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

**R657-9-30. Use of Dogs.**

(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

**R657-9-31. Season Dates and Bag and Possession Limits.**

(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

**R657-9-32. Closed Areas.**

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

(a) Brown's Park - That part adjacent to headquarters.

(b) Clear Lake - Spring Lake.

(c) Desert Lake - That part known as "Desert Lake."

(d) Farmington Bay - Headquarters area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.

(e) Ogden Bay - Headquarters area.

(f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."

(g) Salt Creek - That part as posted known as "Rest Lake."

(h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe. Bear River Refuge will not be open for the special youth hunting day.

(i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.

(j) State Parks

Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing (R651-603-5).

(k) Great Salt Lake Marina and adjacent areas as posted.

(l) Millard County

Gunnison Bend Reservoir and that part of the inflow area as marked and posted.

(m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

**R657-9-33. Shooting Hours.**

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Wilson's snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

**R657-9-34. Falconry.**

(1) Falconers must obtain an annual Wildlife Habitat Authorization, a small game or combination license, a federal migratory bird stamp and a falconry license to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

**R657-9-35. Migratory Game Bird Harvest Information Program (HIP).**

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call 1-800-WETLAND (1-800-938-5263) or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe and coot to obtain their HIP registration number. Use of a public pay phone will not allow access to 1-800-WETLAND.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license code key;

(c) name;

(d) address;

(e) birth date; and

(f) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

**KEY: wildlife, birds, migratory birds, waterfowl***
**October 16, 1999 23-14-18**
**Notice of Continuation August 25, 1997 23-14-19**
**50 CFR part 20**

**R657. Natural Resources, Wildlife Resources.**
**R657-10. Taking Cougar.**
**R657-10-1. 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 and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

**R657-10-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Cougar" means Felis concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(c) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(e) "Green pelt" means the untanned hide or skin of any cougar.

(f) "Kitten" means a cougar less than one year of age.

(g) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(h) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

**R657-10-3. Permits for Taking Cougar.**

(1)(a) To harvest a cougar, a person must first obtain an annual Wildlife Habitat Authorization and a limited entry cougar permit or a harvest objective cougar permit for a specified management unit as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) To pursue cougar, a person must first obtain an annual Wildlife Habitat Authorization and a cougar pursuit permit from a division office. A cougar pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-27(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

**R657-10-4. Permit Exchanges.**

(1)(a) Any person who has obtained a harvest objective cougar permit may exchange that permit for any other harvest objective unit provided the unit objective has not been met and the unit is still open.

(b) Limited entry cougar permits may not be exchanged.

(2)(a) A $5 handling fee will be charged for the exchange of a harvest objective permit.

(b) Any person who exchanges a harvest objective permit must complete a questionnaire at the time the exchange is made.

(3)(a) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

(b) Harvest objective permits may be exchanged only at division offices.

**R657-10-5. Purchase of Wildlife Habitat Authorization or Permit by Mail and Duplicates.**

(1) A person may obtain a wildlife habitat authorization, cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, and fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

**R657-10-6. Hunting Hours.**

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

**R657-10-7. Firearms and Archery Tackle.**

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic; and

(2) a bow and arrows, except a crossbow may not be used.

**R657-10-8. Traps and Trapping Devices.**

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

**R657-10-9. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-603-5.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

**R657-10-10. Prohibited Methods.**

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

**R657-10-11. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife.

**R657-10-12. Party Hunting.**

A person may not take a cougar for another person.

**R657-10-13. Use of Dogs.**

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the proclamation of the Wildlife Board for taking cougar.

(2) The owner and handler of dogs used to take or pursue cougar must have a valid cougar permit or cougar pursuit permit in possession while engaged in taking or pursuing cougar.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a valid pursuit permit and a cougar permit.

**R657-10-14. Tagging Requirements.**

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

**R657-10-15. Evidence of Sex and Age.**

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

**R657-10-16. Permanent Tag.**

(1) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

**R657-10-17. Transporting Cougar.**

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

**R657-10-18. Exporting Cougar from Utah.**

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

**R657-10-19. Donating.**

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

**R657-10-20. Purchasing or Selling.**

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or

barter a tooth, claw, paw, or skull of any cougar.

**R657-10-21. Waste of Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

**R657-10-22. Livestock Depredation and Human Health and Safety.**

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken with any weapon authorized for taking cougar.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

**R657-10-23. Questionnaire.**

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

**R657-10-24. Taking Furbearers.**

(1) Furbearers, including badger, beaver, black-footed ferret, bobcat, fisher, red fox, gray fox, kit fox, lynx, marten, mink, otter, ringtail, skunk, weasel, wolf and wolverine may be taken only in accordance with the furbearer proclamation.

(2) A person may not disturb, remove or possess a trap, trapping device or any wildlife held in a trap without first obtaining written permission from the trap owner.

**R657-10-25. Taking Cougar.**

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased over-the-counter at division offices.

(2) A person may not:

(a) take or pursue a female cougar with kittens; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots or any cougar accompanied by young.

(4) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(5) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.

**R657-10-26. Extended and Preseason Hunts.**

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

(2) The director may authorize only those hunters who drew a limited entry permit or have purchased a harvest objective permit to hunt on that management unit and participate in a preseason or extended season hunt.

**R657-10-27. Cougar Pursuit.**

(1) Cougar may be pursued only by persons who have obtained an annual Wildlife Habitat Authorization and a cougar pursuit permit. The cougar pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(3) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) A cougar pursuit permit is valid on a calendar year basis.

**R657-10-28. General Application Information.**

(1) A person must obtain or apply for an annual Wildlife Habitat Authorization before the division may issue a cougar permit.

(2) A person may not apply for or obtain more than one cougar permit for the same year, except as provided in Section

R657-10-4.

(3) A person must be 12 years of age or older prior to the last day of the application period to apply for a limited entry cougar permit.

(4) Limited entry cougar permits are valid only for the management unit and for the specified season designated on the permit.

**R657-10-29. Waiting Period.**

(1) Any person who obtained a limited entry permit valid for the current season may not apply for a permit for a period of two years.

(2) Any person who draws a limited entry permit for the current season may not apply for a permit for a period of two years.

(3) Waiting periods are not incurred as a result of purchasing harvest objective permits.

**R657-10-30. Application Procedure.**

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(3) A Wildlife Habitat Authorization may be purchased before applying, or the Wildlife Habitat Authorization will be issued to the applicant upon successfully drawing a permit. The Wildlife Habitat Authorization number or fee must be submitted with the application.

(4)(a) Applications must be mailed by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar. Applications filled out incorrectly or received later than the date published in the cougar proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on the application, the applicant may be contacted for correction.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-10-32.

**R657-10-31. Fees.**

(1) Each application must include:

(a) the permit fee, which includes the nonrefundable handling fee; and

(b) the Wildlife Habitat Authorization fee, if it has not yet been purchased.

(2)(a) Personal checks, cashier's checks, money orders and credit cards are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) All payments must be made payable to the Utah Division of Wildlife Resources.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(4)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division charges a returned check collection fee for any checks returned unpaid from the bank.

(5)(a) A permit shall be legally deemed invalid if payment is not received for that permit, or a check is returned unpaid from the bank or a credit card is invalid or refused, and a person has received the permit.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(6) Permits are mailed to successful applicants.

(7)(a) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a refund in December.

(b) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(c) The handling fees are nonrefundable.

**R657-10-32. Drawing and Remaining Permits.**

(1) Drawing results will be posted on the date published in the proclamation of the Wildlife Board for taking cougar at division offices, Lee Kay Center for Hunter Education and Cache Valley Hunter Education Center.

(2)(a) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, any resident limited entry permits remaining after the drawing are available to residents and any nonresident limited entry permits remaining after the drawing are available to nonresidents from the Salt Lake division office by mail-in application. These permits are sold on a first-come, first-served basis.

(b) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits by mail-in application from the Salt Lake division office.

(3) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(4) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.

(5)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) An applicant may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(d) Handling fees will not be refunded.

**R657-10-33. Bonus Points.**

(1) A bonus point is awarded for a valid unsuccessful application in the drawing.

(2) Bonus points are forfeited if the person obtains a permit.

(3) The purchase of a harvest objective permit will not affect bonus points.

(4) Bonus points are not transferable.

(5) Bonus points are tracked by using the applicant's social security number or division-issued hunter identification number.

**R657-10-34. Harvest Objective General Information.**

(1) A person must obtain an annual Wildlife Habitat Authorization before the division may issue a cougar permit.

(2) Harvest objective permits are valid only for the management unit and for the specified season designated on the permit.

(3) Harvest objective permits are not valid after the harvest objective has been met for the specified management unit.

**R657-10-35. Harvest Objective Permit Sales.**

(1) Harvest objective permits are available to residents and nonresidents over-the-counter beginning on the date published in the proclamation of the Wildlife Board for taking cougar from division offices.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

**R657-10-36. Harvest Objective Unit Closures.**

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION to verify that the cougar management unit is still open. The phone line will be updated each day by 8 p.m.

(2) Harvest objective units are open to hunting until:

(a) the female cougar sub-objective for that unit is met;

(b) the cougar harvest objective for that unit is met; or

(c) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-27.

(4) Any person who obtains a harvest objective cougar permit may exchange that permit as provided in Section R657-10-3.

**KEY: wildlife, cougar*, game laws**

**October 16, 1999 23-14-18**

**Notice of Continuation August 25, 1997 23-14-19**

**R657. Natural Resources, Wildlife Resources.**
**R657-37. Cooperative Wildlife Management Units for Big Game.**
**R657-37-1. Purpose and Authority.**

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game.

(2) Cooperative Wildlife Management units are established to:

(a) increase wildlife resources;

(b) provide income to landowners;

(c) provide the general public access to private and public lands for hunting big game within a Cooperative Wildlife Management Unit;

(d) create satisfying hunting opportunities; and

(e) provide adequate protection to landowners who open their lands for hunting.

**R657-37-2. Definitions.**

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "CWMU" means Cooperative Wildlife Management Unit.

(b) "CWMU agent" means a person appointed by a landowner association member or landowner association operator to protect private property within the CWMU.

(c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependant children.

(d) "Landowner association member" means a landowner or an organization of owners of private land who sign the CWMU application form.

(e) "Landowner association operator" means a person designated by a landowner association member to operate the CWMU.

(f) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, allowing a landowner association member or landowner association operator, to designate who may purchase a CWMU big game hunting permit from a division office.

**R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.**

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (2).

(b) The land comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, shall not be included as part of any big game CWMU.

(2) The Wildlife Board may renew a CWMU that is less than 10,000 acres provided the CWMU legally possessed a 1999 CWMU Certificate of Registration, allowing for acreage less than 10,000 contiguous acres or allowing noncontiguous land parcels.

(3)(a) Cooperative Wildlife Management Units organized for hunting big game, shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association member shall meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportional habitat on public land to private land within the CWMU.

**R657-37-4. Cooperative Wildlife Management Unit Management Plan.**

(1) The landowner association member shall manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for the respective big game unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by the Wildlife Board for a period of five years, expiring on January 31 at the end of the five-year period.

(b) The CWMU Management Plan must be amended when the management plan or land ownership changes.

(c) The CWMU Management Plan may be amended as requested by the Wildlife Board, the division or the CWMU landowner association member or operator.

(3)(a) The CWMU Management Plan must include:

(i) big game management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game unit, including population management and antlerless harvest;

(ii) procedures for obtaining age and harvest data;

(iii) an explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5 and Rule R657-37-7(3)(a);

(iv) private and public permit ratio;

(v) rationale and purpose for including public land within the CWMU boundaries, if public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) rules and guidelines defining the CWMU landowner association member, landowner association operator or CWMU agent responsibilities;

(viii) County Recorder Plat Maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(ix) two original 1:100,000 USGS maps, which shall be filed in the appropriate regional office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU; and

(x) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the

CWMU.

(b) The division shall, upon the applicant's request, provide assistance in preparing the CWMU Management Plan.

**R657-37-5. Application for Certificate of Registration.**

(1) An application for a CWMU Certificate of Registration must be completed and returned to the division regional office where the proposed CWMU is located no later than August 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code;

(c) the name of the designated landowner association operator; and

(d) a $5 nonrefundable handling fee.

(3) The division may reject any application that is incomplete or completed incorrectly.

(4) The division shall forward the complete and correct application and required documentation to the Wildlife Board for consideration.

(5) Upon receiving the application, required documentation, appropriate fee and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for one year, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(6)(a) A landowner association member or landowner association operator issued a certificate of registration must request an amendment to the original certificate of registration as provided in Subsection (b) or through the renewal process described in R657-37-6 for any variation in:

(i) the CWMU Management Plan; or

(ii) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(b) A request for an amendment to a certificate of registration to allow a CWMU permit holder to hunt within a reciprocal CWMU must be made in writing and submitted to the appropriate division regional supervisor and wildlife manager.

(i) Upon approval by the regional supervisor, an amendment to the original certificate of registration shall be issued in writing.

(7) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(8) A CWMU Certificate of Registration is issued on an annual basis and shall expire on January 31, providing the certificate of registration is not suspended or revoked prior to the expiration date.

(9) The CWMU application/agreement is binding upon the landowner association members, landowner association operators and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

**R657-37-6. Renewal of a Certificate of Registration.**

(1) A CWMU Certificate of Registration must be renewed by the Wildlife Board annually or when any changes occur in the activities or information authorized by the Wildlife Board in the original certificate of registration or CWMU Management Plan.

(2) An application for renewal of a certificate of registration must be completed and returned to the division regional office where the CWMU is established no later than September 1.

(3) The renewal application must identify all changes from the previous years CWMU Certificate of Registration or CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan, including all maps as described in R657-37-4(3), if the plan has expired or is being amended;

(b) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code;

(c) the name of the designated landowner association operator; and

(d) a $5 nonrefundable handling fee.

(5) The division may reject any application that is incomplete or completed incorrectly.

(6) The division shall forward the complete and correct renewal application to the Wildlife Board for consideration.

(7) The Wildlife Board shall consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(8) Upon receiving the application, required documentation, appropriate fee and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration allowing the landowner association member or landowner association operator to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(9) A CWMU Certificate of Registration for renewal is authorized annually and shall expire on January 31, providing the certificate of registration is not revoked or suspended prior to the expiration date.

**R657-37-7. Operation by Landowner Association.**

(1)(a) A CWMU must be operated by a landowner association member who owns land within the CWMU or a landowner association operator who leases or otherwise controls hunting on land within the CWMU.

(b) A landowner association member or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association member or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with any other landowner association member or landowner association operator to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-5(6)(b) and R657-37-7(3)(b).

(b) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator shall provide any person who has obtained a permit, including general public permittees, a comparable hunting opportunity in terms of hunting area and number of days to hunt big game.

(b) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4) Each landowner association member or landowner association operator shall post all boundaries of the CWMU in accordance with Section 23-23-7(6).

**R657-37-8. Cooperative Wildlife Management Unit Agents.**

(1) A landowner association member may appoint CWMU agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent shall wear or have in possession a form of identification prescribed by the Wildlife Board which indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry into the private land portions of a CWMU to any person, except owners of land within the unit and their employees, who:

(a) does not have in their possession a CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged private property within a CWMU; or

(d) fails or has failed to comply with reasonable rules of a landowner association.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent shall comply with the relevant laws of this state.

**R657-37-9. Permit Allocation.**

(1) The division shall issue CWMU permits for hunting big game to permittees:

(a) qualifying through a general public drawing; or

(b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member shall, in accordance with the tables provided in Subsection (4), jointly determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(c).

(4)(a) Permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

TABLE 1

MOOSE AND PRONGHORN

Cooperative Wildlife Management Unit's Share

| Option | Bucks/Bulls | Antlerless |
|---|---|---|
| 1 | 60% | 0% |
| 2 | 60% | 40% |

Public's Share

| Option | Bucks/Bulls | Antlerless |
|---|---|---|
| 1 | 40% | 0% |
| 2 | 40% | 60% |

TABLE 2

ELK AND DEER

Cooperative Wildlife Management Unit's Share

| Option | Bucks/Bulls | Antlerless |
|---|---|---|
| 1 | 90% | 0% |
| 2 | 85% | 25% |
| 3 | 80% | 40% |
| 4 | 75% | 50% |
| 5 | 50% | 0% |

Public's Share

| Option | Bucks/Bulls | Antlerless |
|---|---|---|
| 1 | 10% | 100% |
| 2 | 15% | 75% |
| 3 | 20% | 60% |
| 4 | 25% | 50% |
| 5 | 50% | 0% |

(5) Antlerless permits must be allocated to the CWMU proportional to the ratio of numbers of big game species using the CWMU compared to the total herd population of the respective big game species on the herd management unit.

(6) A landowner association member or landowner association operator shall provide access free of charge to any person who has received a CWMU permit through the general public big game drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated for a species or sex of big game, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game herds, including available forage, depredation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species

and sex of big game specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(11)(a) A complete list of the current CWMUs, big game hunts, and the date, time, and number of permits available for public drawing shall be published in the proclamation of the Wildlife Board for taking big game.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamation of the Wildlife Board for taking big game. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

**R657-37-10. Permit Cost.**

The fee for permits allocated to any CWMU is the same as the applicable:

(a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer; and

(c) once-in-a-lifetime permit fee for moose.

**R657-37-11. Possession of Permits and License by Hunters - Restrictions.**

(1) A person may not hunt in a CWMU without having in his possession:

(a) a valid CWMU permit; and

(b) the necessary hunting licenses, permits and tags.

(2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

(a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and

(b) make arrangements with the landowner association member or landowner association operator for the hunt.

**R657-37-12. Season Lengths.**

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) archery buck deer and archery bull elk seasons may be established beginning with the opening of the general archery deer season through October 31;

(b) general season buck deer, general season bull elk, pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

(c) muzzleloader deer seasons may be established September 1, 1999 through November 14, 1999;

(d) beginning January 1, 2000, muzzleloader deer seasons may be established September 1 through October 31, or the closing date of the muzzleloader deer season on the state wildlife management unit that contains the CWMU, whichever is later;

(e) muzzleloader elk seasons may be established September 1 through the end of the general muzzleloader elk season;

(e) antlerless elk seasons may be established August 15 through January 31; and

(f) antlerless deer seasons may be established August 15 through December 31.

(2) The Wildlife Board may make variances to the seasons provided in Subsection (1) for good cause.

**R657-37-13. Rights-of-Way.**

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

**R657-37-14. Discipline or Violation.**

(1) The Wildlife Board may refuse to issue a certificate of registration to an applicant, and may refuse to renew or may revoke, restrict, place on probation, or otherwise act upon a certificate of registration where the holder has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU application/agreement; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

**KEY: wildlife, cooperative wildlife management unit**
**October 16, 1999 23-23-3**
**Notice of Continuation May 3, 1999**

**R657. Natural Resources, Wildlife Resources.**
**R657-46. The Use of Game Birds in Dog Field Trials and Training.**
**R657-46-1. Purpose and Authority.**

Under authority of Sections 23-14-18, 23-14-19 and 23-17-9 this rule provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training.

**R657-46-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Field trial" means an organized event where the abilities of dog handlers and their dogs and are evaluated, including the ability of the dogs to hunt or retrieve game birds.

(b) "Game bird" means:

(i) crane;

(ii) blue, ruffed, sage, sharp-tailed, and spruce grouse;

(iii) chukar, red-legged, and Hungarian partridges;

(iv) pheasant;

(v) band-tailed pigeon;

(vi) bobwhite, California, Gambel's, harlequin, mountain, and scaled quail;

(vii) waterfowl;

(viii) common ground, Inca, mourning, and white-winged dove;

(ix) wild or pen-reared wild turkey of the following subspecies:

(A) Eastern;

(B) Florida or Osceola;

(C) Gould's;

(D) Merriam's;

(E) Ocellated; and

(F) Rio Grande; and

(x) ptarmigan.

(c) "Train" or "training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.

**R657-46-3. Application for a Field Trial Certificate of Registration.**

(1)(a) A person may conduct a field trial using pen-reared game birds provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources, except as provided in Subsection (b).

(b) A person may conduct a field trial using pen-reared game birds on a commercial hunting area without obtaining a certificate of registration.

(2) Applications are available at any division office.

(3) The application must include written permission from the owner, lessee, or land management agency of the property where the field trial is to be conducted.

(4)(a) Applications must be submitted to the appropriate regional division office where the field trial is being held.

(b) Applications must be received at least 45 days prior to the date of the field trial.

(5) The division will not approve any application for an area where, in the opinion of the division, the field trial or the release of pen-reared game birds interferes with wildlife, wildlife habitat or wildlife nesting periods.

(6) Field trials may be held only during the dates and within the area specified on the field trial certificate of registration.

**R657-46-4. Use of Pen-Reared Game Birds for Field Trials.**

(1) Legally acquired pen-reared game birds may be possessed or used for field trials.

(2) Any person using pen-reared game birds must have an invoice or bill of sale in their possession showing lawful personal possession or ownership of such birds.

(3) Pen-reared game birds may not be imported into Utah without a valid veterinary health certificate as required in Rules R58-1 and R657-4.

(4)(a) Each pen reared game bird must be marked with an aluminum leg band or other permanent marking before being released in the field trial, except as provided in Subsection (d).

(b) Aluminum leg bands may be purchased at any division office.

(c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(d) Each pen-reared game bird used in a field trial that is conducted on a commercial hunting area may be released without marking each pen-reared game bird, as with an aluminum leg band.

(5) Pen-reared game birds used for a field trial may be released only on the property specified in the certificate of registration where the field trial is conducted.

(6) After release, pen-reared game birds may be taken:

(a) by the person who released the pen-reared game birds, or by any person participating in the field trial; and

(b) only during the dates of the field trial event as specified in the certificate of registration.

(7) Wild game birds may be taken only during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(8) Pen-reared game birds acquired for a field trial that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(9) Pen-reared game birds that leave the property where the field trial is held at the end of the field trial shall become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

**R657-46-5. Use of Pen-Reared Game Birds for Dog Training.**

(1)(a) A person may train a dog using legally acquired pen-reared game birds provided:

(i) the person using the pen-reared game birds has an invoice or bill of sale in their possession showing lawful personal possession or ownership of the pen-reared game birds;

(ii) each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released for training, except as provided in Subsection (c); and

(iii) any pheasant, which is intended to be killed during training, must be marked with a visible streamer or tape at least 24 inches in length while in the field.

(b) Aluminum leg bands may be purchased at any division office.

(c) Each pen-reared game bird used for dog training that is conducted on a commercial hunting area may be released without marking each pen-reared game bird with an aluminum leg band or other permanent marking.

(2)(a) The training may not consist of more than four dogs in the field at any time.

(b) A person or group of persons may not release more than ten pen-reared game birds per day, except a professional dog trainer may release more than ten pen-reared game birds per day provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources.

(c) A person or group of persons may not use more than two firearms in the field at any time.

(3) Pen-reared game birds acquired for training that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(4) Pen-reared game birds that are not recovered on the day of the training or pen-reared game birds that escape shall become property of the state of Utah and may not be recaptured or taken, except during legal hunting seasons as specified in the Upland Game and Waterfowl proclamations of the Wildlife Board.

(5) A person training dogs on official dog training areas, designated by the division, is not required to comply with Subsection (1)(a)(iii) or Subsection (2).

**R657-46-6. Use of Wild Game Birds for Dog Training.**

(1) A person may train a dog on wild game birds provided:

(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;

(b) the dogs are not on any state wildlife management or waterfowl management areas as specified in Rule R657-6, except during open hunting seasons or as posted by the division;

(c) the person training a dog on wild game birds, except during legal hunting seasons:

(i) must not possess a firearm, except a pistol firing blank cartridges;

(ii) must comply with city and county ordinances pertaining to the discharge of any firearm;

(iii) must obtain written permission from the landowner for training on properly posted private property.

**KEY: wildlife, birds, dogs, training**
**October 16, 1999** **23-14-18**
**23-14-19**

**R708. Public Safety, Driver License.**
**R708-22. Commercial Driver License Administrative Proceedings.**
**R708-22-1. Authority.**

This rule is authorized by Subsection 53-3-221(5)(a)(i).

**R708-22-2. Commercial Driver License Administrative Proceedings.**

All adjudicative proceedings for commercial driver license (CDL) holders, including but not limited to, the application for and denial, disqualification, suspension or revocation of authorization to operate any particular class or classes of vehicles, shall be conducted according to applicable rules for administrative proceedings as specified in section R708-17.

**KEY: administrative proceedings**
**1989 53-3-221(5)(a)(i)**
**Notice of Continuation October 4, 1999 63-46b-1**

**R708. Public Safety, Driver License.**
**R708-24. Renewal of a Commercial Driver License (CDL).**
**R708-24-1. Authority.**

This rule is promulgated pursuant to Section 53-3-413.

**R708-24-2. Procedure for Renewal of a CDL.**

(1) When applying for a CDL renewal, applicants shall use the same procedure used to obtain an original CDL. The applicant shall comply with Sections 53-3-105, 53-3-407, and 49 CFR 383 and 391.

(2) All knowledge tests and/or skills tests will be waived by the Driver License Division except:

(a) the hazardous materials knowledge test which is required by 49 CFR 383.73;

(b) when changes in an applicant's medical condition may require further testing/evaluation;

(c) if there are factors, including lack of knowledge, which indicate the applicant may have an inability to operate commercial vehicles in a reasonable, prudent and safe manner.

(3) Applicants whose CDL has expired for a period of more than six months, or whose driving privileges are disqualified, suspended, or revoked, are required to complete appropriate knowledge and skills tests.

(4) Applicants shall comply with Federal Highway Administration requirements contained in 49 CFR 383.71, 383.73 and 391.

**KEY: licensing**
**July 17, 1995** **53-3-401**
**Notice of Continuation October 5, 1999**

**R710. Public Safety, Fire Marshal.**
**R710-6. Liquefied Petroleum Gas Rules.**
**R710-6-1. Adoption, Title, Purpose and Scope.**

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 1998 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 1996 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 501C, Standard on Recreational Vehicles, 1996 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 Uniform Fire Code (UFC), Volume 1, Article 82, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.5 Uniform Fire Code (UFC), Volume 2, Uniform Fire Code Standards (UFCS), No. 82-1 and No. 82-2, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.6 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.7 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.8 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.9 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

**R710-6-2. Definitions.**

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Division" means the Division of the State Fire Marshal.

2.4 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.5 "IFCI" means International Fire Code Institute.

2.6 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.7 "LPG" means Liquefied Petroleum Gas.

2.8 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.9 "NFPA" means the National Fire Protection Association.

2.10 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.11 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.12 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.13 "UCA" means Utah State Code Annotated 1953 as amended.

2.14 "UFC" means Uniform Fire Code.

2.15 "UFCS" means Uniform Fire Code Standards.

**R710-6-3. Licensing.**

3.1 Type of license.

Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

Class IV: Those businesses listed below:

(a) Dispensers

(b) Sale of containers greater than 96 pounds water capacity.

(c) Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made in writing, on forms

provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

(a) The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

(b) Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

**R710-6-4. LP Gas Certificates.**

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

(1) Carburetion
(2) Dispenser
(3) HVAC/Plumber
(4) Recreational Vehicle Service
(5) Serviceman
(6) Transportation and Delivery

4.4 Initial Examinations.

(a) The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

(b) The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

(c) To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

(d) Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

(e) As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made in writing on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

(a) The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least

60 days before the renewal date.

(b) The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

(c) The certificate holder is responsible to complete the 25 question re-examination and return it to the Division in sufficient time to renew.

(d) The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Article 5.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

(a) Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

(c) It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

(a) The name and address of the applicant.

(b) The physical description of applicant.

(c) The signature of the LP Gas Board Chairman.

(d) The date of issuance.

(e) The expiration date.

(f) Type of service the person is qualified to perform.

(g) Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

(a) No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

(b) A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(c) Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

(d) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

(a) Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

(c) The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

(d) The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed forty five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

**R710-6-5. Adjudicative Proceedings.**

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement in the application, whether original or renewal.

(c) Refusal to allow inspection by the Division or enforcing authority on an annual basis to determine compliance

with the provisions of these rules.

(d) The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

(e) The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

(f) The person or applicant refuses to take the examination.

(g) The person or applicant has been convicted of any of the following:

(i) a violation of the provisions of these rules;

(ii) a crime of violence or theft; or

(iii) a crime that bears upon the person or applicant's ability to perform their functions and duties.

(h) The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division 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 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**R710-6-6. Fees.**

6.1 Fee Schedule.

TABLE

| | | |
|---|---|---|
| (a) | License and LPG Certificates (new and renewals): | |
| (1) | License | |
| (A) | Class I | $300.00 |
| (B) | Class II | 300.00 |
| (C) | Class III | 70.00 |
| (D) | Class IV | 100.00 |
| (2) | Branch office license | 225.00 |
| (3) | LPG Certificate | 30.00 |
| (4) | LPG Certificate (Dispenser--Class B) | 10.00 |
| (5) | Duplicate | 30.00 |
| (b) | Examinations: | |
| (1) | Initial examination | 20.00 |
| (2) | Re-examination | 20.00 |
| (3) | Five year examination | 20.00 |
| (c) | Plan Reviews: | |
| (1) | More than 5000 water gallons of LPG | 90.00 |
| (2) | 5,000 water gallons or less of LPG | 45.00 |
| (d) | Special Inspections. | |
| (1) | Per hour of inspection | 30.00 |
| (charged in half hour increments with part half hours charged as full half hours). | | |
| (e) | Re-inspection (3rd Inspection or more) | 250.00 |

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

(a) Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

(b) When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

**R710-6-7. Board Procedures.**

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 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.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 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 twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

**R710-6-8. Amendments and Additions.**

The following amendments and additions are hereby

adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

(a) All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

(b) If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

(c) The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

(d) The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

(a) Those excluded from the act in UCA, Section 53-7-303.

(b) Containers under federal control.

(c) Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

(d) Containers located at private residences.

8.4 UFC Amendments:

(a) UFC, Section 8201 - Scope. On line 4 after the wording "Appendix B." insert the following: "Also reference NFPA, Standard 58, as amended by the Board".

(b) UFC, Section 8202.1 Permits and Plans. On line 2 after the word "see" replace "Section 105, Permit 1.1" with "the adopted LPG rules". The rest of UFC, Section 8202.1 is deleted.

(c) UFC, Section 8202.2 - Records., is deleted.

(d) UFC, Section 8203.1 - General. Starting on line 2, after the wording "installed in accordance with" insert "NFPA Standard 58, NFPA Standard 54, and".

(e) UFC, Section 8204.1 General. On line 3 delete "and subject to the approval of the chief." and replace it with "as amended by the Board".

(f) UFC, Section 8204.2 on line 4 after the word "areas" insert "as determined by the Board".

(g) UFC, Section 8208 - Smoking and Other Sources of Ignition. On line 1 replace "chief" with "enforcing authority".

(h) UFC, Section 8212.12 is deleted and replaced with NFPA, Standard 58, Section 5-4.1,.

8.5 UFCS 82-1 Amendments:

(a) The amendments listed in Part I, Section 82.101 are deleted.

(b) The 1989 edition of NFPA, Standard 58 listed in Part II is deleted and replaced with the 1998 edition of NFPA, Standard 58.

8.6 NFPA, Standard 58 Amendments:

(a) NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall be registered by the National Board of Boiler and Pressure Vessel Inspectors.

(b) NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner. Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

(c) NFPA, Standard 58, Section 2-2.1.9 is deleted and rewritten as follows: Repair or alteration of containers shall comply with the latest edition of the National Board Inspection Code or the API Pressure Vessel Inspection Code as applicable. Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

(d) NFPA Standard 58, Sections 2-4.3(c)(1) and (2) are deleted and amended to read as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

**R710-6-9. Penalties.**

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

TABLE

| | | |
|---|---|---|
| (a) | Concern failure to license | $210.00 to $900.00 |
| (b) | Person failure to obtain LPG Certificate | $30.00 to $90.00 |
| (c) | Failure of concern to obtain LPG Certificate for employees who dispense LPG | $210.00 to $900.00 |
| (d) | Concern doing business under improper class | $140.00 to $600.00 |
| (e) | Failure to notify SFM of change of address | $60.00 |
| (f) | Violation of the adopted Statute or Rules | $210.00 to $900.00 |

9.2 Rationale.

(a) Double the fee plus the cost of the license.

(b) Double the fee plus the cost of the certificate.

(c) Double the fee plus the cost of the license.

(d) Double the fee.

(e) Based on two hours of inspection fee at $30.00 per hour.

(f) Triple the fee.

**KEY: liquefied petroleum gas**
**October 4, 1999** **53-7-305**
**Notice of Continuation October 25, 1996**

**R746. Public Service Commission, Administration.**
**R746-320. Uniform Rules Governing Natural Gas Service.**
**R746-320-1. General Provisions.**

A. Scope and Applicability -- This rule applies to the methods and conditions of service used by utilities furnishing natural gas service in Utah. These rules supersede any conflicting provisions contained in tariffs of natural gas utilities subject to Commission jurisdiction. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-16, Deviation from Rules.

B. Definitions --

1. "British Thermal Unit" or "BTU" means the quantity of heat needed to raise the temperature of one pound of water one degree Fahrenheit.

2. "CFR" means the Code of Federal Regulations, April 1, 1994 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Cubic Foot" means:

a. when gas is supplied and metered to customers at the standard delivery pressure, as defined in Subsection R746-320-2(G), the volume of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot;

b. when gas is supplied to customers through positive displacement meters at other than standard delivery pressure, the volume of gas which occupies one cubic foot after applying a suitable correction factor to simulate delivery and metering at standard delivery pressure; the correction factor shall include allowance for gas temperature when it is reasonably practical to determine that factor;

c. when gas is supplied through other meters, the volume of gas which occupies one cubic foot at a temperature of 60 degrees Fahrenheit and at absolute pressure as provided in utility tariff rates or regulations approved by this Commission.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with gas by a gas utility subject to Commission jurisdiction.

6. "Customer Meter" means the device used to measure the volume of gas transferred from a gas utility to a customer.

7. "Main" means a distribution line that is designed to serve as a common source of supply for more than one service line. The term does not include service lines.

8. "Service Line" means a distribution line that transports gas from a common source of supply to:

a. a customer meter or the connection to a customer's piping, whichever is farther downstream, or

b. the connection to a customer's piping if there is no customer meter.

9. "Therm" means a unit of heating value equalling 100,000 BTU.

10. "Utility" means a gas corporation as defined in Section 54-2-1.

**R746-320-2. Quality Control Equipment, Standards, Records and Reports.**

A. Testing Equipment and Facilities --

1. Utilities shall own and maintain or have access to the testing equipment necessary to make Commission-required tests of the gas sold by the utilities. The Commission may approve arrangements for individual utilities to have their testing done by another utility or competent party.

2. Utilities shall properly maintain testing equipment which shall be subject to Commission inspection. The Commission may inspect the testing equipment at reasonable times.

3. Utilities shall locate and use testing equipment so as to ensure that gas samples taken are fairly representative of the gas being distributed in the portion of the system being tested.

B. Heating Value --

1. Utilities shall file with the Commission, as part of their tariffs, the range within which the average heating value per unit of gas to be sold will fall.

2. Utilities shall maintain the heating value established in their tariffs and in so doing shall regulate the chemical composition and specific gravity of the gas so as to maintain satisfactory combustion in customers' appliances without repeated adjustment of the burners.

3. When utilities distribute supplemental or substitute gas, they shall ensure that it performs satisfactorily regardless of heating value.

C. Heating Value Tests, Records, and Reports --

1. Utilities shall make sufficient tests, or have access to tests made by their suppliers, to accurately determine the heating value of the gas sold.

2. Tests shall be made at a location, or locations, which will ensure the samples taken fairly represent the gas being furnished to the utilities and their customers. Test reports shall be available for review when requested by the Commission.

D. BTU Measurement Equipment --

1. Utilities shall maintain or have access to an approved type calorimeter in an adequate testing station as specified in Subsection R746-320-2(C)(1). Utilities may use an approved recording calorimeter which shall be checked at least once each month with an approved standard calorimeter or against a standard gas.

2. Both calorimeter and method of testing shall be subject to Commission inspection.

3. Utilities may use BTU measuring equipment other than calorimeters upon petition to and approval by the Commission.

E. Gas Odor -- Gas supplied to customers shall be odorized in accordance with 49 CFR 192.625, which is incorporated by this reference.

F. Purity of Gas -- Gas supplied to customers shall contain no more than 75 to 80 parts per million of total sulfur. Gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered.

G. Standard Delivery Pressure -- Standard Delivery Pressure shall be four ounces above local atmospheric pressure. Maximum and minimum low pressure delivery pressures shall conform to 49 CFR 192.623, which is incorporated by reference.

H. Pressure Testing and Maintenance of Standards --

1. Utilities shall make every reasonable effort to maintain adequate gas pressure. Utilities shall make determinations and keep records of pressures adequate to enable the utilities at all times to have accurate current knowledge of the pressure existing in their distribution systems. Pressure records shall be properly identified, dated, and filed in the utilities' records.

2. Utilities shall periodically test and maintain the accuracy of any recording pressure gauges.

3. Pressure limiting and regulator stations shall comply with 49 CFR 192.741, which is incorporated by this reference.

**R746-320-3. Use, Location, and Accuracy Tests of Meters.**

A. Use of Meters -- Gas sold by utilities shall be metered through approved meters except in case of emergency, or when otherwise authorized by the Commission as provided in R746-100-16, Deviation from Rules. Meters shall bear an identifying number and shall be plainly marked to show the units of the meter index. When gas is delivered at higher than standard pressure, the contract, rate schedule, or gas bill shall specify the method to be used to correct the gas volume to standard pressure.

B. Meter Location -- Meters may be located either inside or outside of buildings. The locations selected by utilities and provided by customers shall be convenient for inspection and reading of the meters and shall comply with 49 CFR 192.353, 192.355, 192.357, incorporated by reference.

C. Meter Accuracy at Installation -- New meters and reinstalled meters shall be no more than one percent fast or two percent slow.

D. Initial Tests of Meters -- Meters shall be tested and meet the foregoing accuracy limits before installation. When meters are placed into service, the meter index reading shall be recorded.

E. Periodic Tests of Meters --

1. Utilities shall adopt schedules for periodic tests and repairs of positive displacement meters. Utilities shall keep records of accuracy of meters periodically tested and shall analyze the records to determine meter service life for purposes of adjusting the periods for testing and servicing meters.

2. Unless a time extension or a statistical sampling method is approved by the Commission, meter test intervals for displacement meters of the following rated capacities shall not exceed the following:

TABLE

| | | |
|---|---|---|
| a. | To 300 cu. ft./hr | 10 yrs |
| b. | 300 to 600 cu. ft./hr | 5 yrs |
| c. | 600 to 1,500 cu. ft./hr | 3 yrs |
| d. | Over 1,500 cu. ft./hr | 2 yrs |
| e. | Orifice Meters, inspected and checked for accuracy | 1 yr |

F. Meter Tests by Request --

1. Upon written request, utilities shall test a customer's meter promptly. If a meter has been tested within 12 months preceding the date of the request, the utility concerned may require the customer to make a deposit to defray the costs of the test. If the meter is found to be more than three percent inaccurate, either over or under, the deposit shall be refunded; otherwise the deposit may be processed by the utility as a service charge. The deposit shall not exceed the estimated cost of performing the test.

2. The customer shall be entitled to observe the test and the utility shall forward a copy of the written report of the test to the customer.

G. Referee Meter Tests -- If there is a dispute over a test, the customer concerned may request a referee test in writing. The Commission may require the deposit of a testing fee in connection with a referee test to defray costs of the test. Upon filing of the request and receipt of the deposit, if needed, the Commission shall notify the utility and the utility shall not remove the meter until the Commission so instructs. The meter shall be tested in the presence of the Commission's representative, and if the meter is found to be more than three percent inaccurate, the customer's deposit may be refunded; otherwise it may be kept.

H. Billing Adjustments for Meter Variance --

1. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent fast, there shall be refunded to the customer the amount billed in error for one-half the period since the last test. The one-half period shall not exceed six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond, that date.

2. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent slow, the utility may bill the customer in an amount equal to the unbilled error for one-half the period since the last test, that one-half period shall not exceed six months.

3. When there is a nonregistering meter, the customer may be billed on an estimate based on previous bills for similar usage. The estimated period shall not exceed three months.

4. When there is unauthorized use, the customer may be billed on a reasonable estimate of the gas consumed.

I. Standard Meter Test Methods -- Meter tests shall be made by trained personnel using approved methods and testing equipment. The methods and apparatus recommended in the Gas Displacement Standard, Second Edition 1985, published by the American Gas Association and incorporated by this reference, may be used to satisfy this rule.

J. Meter Testing Equipment -- Utilities shall own and maintain, or have access to, at least one five-cubic-foot prover of an approved type, as well as other equipment necessary to test meters. Meter testing equipment shall be installed in a meter testing station designed for that purpose.

K. Records of Meter Tests -- Utilities shall record the original data of meter tests on standard forms and preserve the data until the next time meters are tested.

L. Meter Records -- Utilities shall keep permanent records of their meters. Utilities shall start a record for each meter when purchased and include the date of purchase, identification number, manufacturer's name, type, and rating. Utilities shall keep records of any tests, adjustments, and repairs. Utilities shall keep records of meter readings when the meters are installed or removed from service together with the addresses of customers served. The meter records shall be systematically kept and filed until the meters are retired.

**R746-320-5. Design, Construction, and Operation of Plant.**

A. Generally --

1. Facilities owned or operated by utilities and used in furnishing gas shall be designed, constructed, maintained and operated so as to provide adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the

hazards to which employees, customers, and others may be subjected from their equipment and facilities.

2. Utilities shall use accepted good practice of the gas industry, but in no event shall those practices be construed to require less than required by this rule, R746-409, Pipeline Safety in Utah, Chapter 13 of Title 54, and the federal Natural Gas Pipeline Safety Act, 49 U.S.C. Section 1671 et seq.

B. Regulators -- If the gas pressure maintained in a customer's service line exceeds the standard delivery pressure, the utility concerned shall install an approved service regulator on the service line on the customer's premises. The regulator shall be set to deliver gas within the established delivery pressure range and shall have a vent piped to the outdoors if the regulator is located within a building. If pressure in the service line exceeds 100 p.s.i.g., a primary regulator, in addition, shall be installed on the service line outside the building. Regulators shall not be required for service of industrial or commercial customers served through high pressure meters.

C. Main Extensions -- Utilities shall adopt, with Commission approval, uniform rules and regulations governing main extensions.

D. Installation and Maintenance of Service Lines and Meters --

1. Utilities shall furnish, install and maintain, free of charge, a gas service line from the gas main adjacent to customers' premises to the customers' property lines or curbs, except that utilities shall not be required to install the piping on the outlet side of meters.

2. Customers may be required by utilities to install or pay in full or in part for gas service lines from property lines to customers' buildings in accordance with approved tariffs.

3. Service lines and meters shall be owned and maintained by utilities.

E. Service Lines for Temporary Service --

1. Utilities may provide temporary service to customers and may require the customers to bear any costs, in excess of any salvage value realized, of installing and removing service lines.

2. Temporary service shall be considered service provided for emergency or short-term use, as specified in approved tariffs, or service for speculative operations or those of questionable permanency.

F. Gas Service Line Valves --

1. New gas service lines, entering customers' buildings, which are operating at a pressure greater than 10 p.s.i.g., and other service lines two inches or larger, I.P.S., shall be equipped with a gas service line valve located on the service line outside buildings served. If a service line valve is underground, it shall be located in a durable curb box at an easily-accessible location. The top of the curb box shall be at ground level and shall be kept visible by the customer.

2. Service lines shall be equipped with a gas service line valve near the meter. If a service line is not equipped with an outside shut-off, the inside shut-off shall be a type which can be sealed in the off position.

**R746-320-6. Records.**

A. Maps and Records --

1. Utilities shall keep suitable maps or records to show size, location, character, and date of installation of major plant items.

2. Upon Commission request, and in form specified by or satisfactory to the Commission, utilities shall file adequate descriptions or maps showing the location of facilities.

B. Operating Records --

1. Utilities shall keep appropriate operating records for use in statistical and analytical studies for regulatory purposes.

2. Operating records shall be subject to Commission inspection at reasonable times.

C. Availability of Records -- Utilities shall keep any records made mandatory by these rules at the utilities' offices in Utah. Commission representatives may inspect mandatory records at reasonable times and in a reasonable manner during normal operating hours.

D. Reports to the Commission -- Utilities shall furnish to the Commission, at times and in form designated by the Commission, the results of required tests and summaries of mandatory records. At Commission request, utilities shall also furnish the Commission with information concerning facilities or operations.

E. Preservation of Records -- The Commission adopts the standards of 18 CFR 225, incorporated by reference, to govern the preservation of records of natural gas utilities subject to the jurisdiction of the Commission.

**R746-320-7. Accounting.**

A. Uniform System of Accounts -- The Commission adopts 18 CFR 201, incorporated by this reference, as the uniform system of accounts for gas utilities subject to Commission jurisdiction. Utilities shall use this system.

B. Uniform List of Retirement Units of Property -- The Commission adopts 18 CFR 216, incorporated by this reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of gas plant. Utilities subject to Commission jurisdiction shall use this schedule.

**R746-320-8. Billing Adjustments.**

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer before the current billing cycle.

2. A "catch-up bill" is a bill based on an actual reading provided after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been provided under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- Each backbill shall contain a written explanation of the reason for the backbill that shall be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-320-8(D).

C. Limitations on Providing a Backbill -- A utility shall not provide a backbill more than three months after the utility actually became aware of the circumstance, error, or condition

that caused the underbilling and the correct calculation to be used in the backbill has been determined. This limitation does not apply to fraud, theft of service, and denial of access to meter situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service provided more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect. In the case of a crossed meter condition, the period covered by the backbill may not exceed six months.

2. When there is customer fraud, theft of service, or denial of access to the meter, the utility shall estimate a bill for the period over which the fraud or theft was perpetrated or that denial of access occurred. The time limitations of Subsection R746-320-8(D)(1) do not apply to customer fraud or theft situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period and Interest -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. However, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case where there has been fraud or theft, interest will be assessed from the time the original payment was due.

**R746-320-9. Overbilling.**

A. Standards and Criteria for Overbilling -- Billing under the following conditions constitutes overbilling:

1. a meter registering more than three percent fast, or a defective meter;

2. use of an incorrect heat value multiplier;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a crossed meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and

8. incorrect estimated demand billings by the utility.

B. Interest Rate --

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations --

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle after the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills, whichever is less. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, when credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment. An exception to the 24 month limitation period applies when the overbilling can be shown to be due to some cause, the date of which can be fixed. In this instance the overcharge shall be computed back to that date and the entire overcharge shall be refunded.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known about an overpayment, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of this rule provision.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

**KEY: rules and procedures, public utilities, utility service shutoff**

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| **October 29, 1999** | **54-2-1** |
| **Notice of Continuation December 8, 1997** | **54-4-1** |
| | **54-4-7** |
| | **54-4-18** |
| | **54-4-23** |

**R850. School and Institutional Trust Lands, Administration.**
**R850-40. Easements.**
**R850-40-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of easements on, through, and over any Trust Lands Administration land, and to establish price schedules for this use.

**R850-40-150. Planning.**

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. Submission of the proposal for review by the Resource Development Coordinating Committee (RDCC); and

2. Evaluation of comments received through the RDCC process.

**R850-40-200. Easements Issued on Trust Lands Administration Lands.**

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands when the agency deems it consistent with trust responsibilities.

**R850-40-300. Easements Acquired by Application.**

1. Easements across Trust Lands Administration lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto. No easement, or other interest in Trust Lands Administration lands may be acquired by prescription, by adverse possession, nor by any other legal doctrine except as provided by statute. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Pursuant to Section 27-12-103,4(2)(a), applications shall be accepted for easements for roads in existence prior to January 1, 1992 for which easements were not in effect on that date. Easements issued under this section shall be subject to all applicable provisions of R850-40.

**R850-40-400. Easement Charges.**

1. The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R850-40-600.

2. The charge for easements issued to a subdivision of the state pursuant to R850-40-300(2) shall be subtracted from the aggregate pool of value collected from sovereign land receipts and other sources allocated for this purpose by the legislature pursuant to statute. Payments may be made over time.

3. The agency may, when issuing easements pursuant to R850-40-300(2), also accept payment from sources other than the aggregate pool and may credit the value of benefits accruing to trust beneficiaries from continued maintenance of the easement and the value of access against accrued interest.

**R850-40-500. Surveys.**

Anyone desiring to perform a survey on Trust Lands Administration land with the intent of filing an application for an easement, shall prior to entry for surveying activities, file with the agency written notice of intent to conduct a survey of the proposed location of the easement. The notice, which may be in letter form, shall describe the proposed project, including the purpose, general location, potential resource disturbances of the proposed easement and survey, and projected construction time for any improvements. The notice shall contain an agreement to indemnify and hold the agency and any authorized lessees harmless against liability and damages for loss of life, personal injury and property damage occurring due to survey activities and caused by applicant, his employees, his agents, his contractors or subcontractors and their employees. In lieu of an agreement the applicant may submit a surety bond in an amount agreeable to the director. The written notice shall be reviewed by the agency. The agency may require the applicant to obtain a right-of-entry agreement.

**R850-40-600. Minimum Charges for Easements.**

The agency may establish price schedules for easements based on the cost incurred by the agency in administering the easement and the fair-market value of the particular use.

**R850-40-700. Application Procedures.**

1. Time of Filing. Applications for an easement shall be received for filing in the office of the agency during office hours pursuant to R850-3.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

**R850-40-800. Term of Easements.**

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

**R850-40-900. Conveyance Documents.**

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

**R850-40-1000. Bonding Provisions.**

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days' written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "School and Institutional Trust Lands Administration and Grantee, c/o Grantee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the grantee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the grantee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

**R850-40-1100. Conflict of Use.**

The agency reserves the right to issue non-exclusive easements or other leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements when compatible with the original grant.

**R850-40-1200. Amendments.**

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

**R850-40-1210. Easement Conversion.**

Easements issued for uses or purposes which would more appropriately be authorized by a special use lease shall be converted, whenever possible, to a special use lease. Any application for the conversion of an easement to a special use lease must follow the process outlined in R850-30-500(2)(g).

**R850-40-1300. Renewal of Easement.**

Prior to the expiration date of any easement heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

**R850-40-1400. Removal of Sand and Gravel.**

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

**R850-40-1500. Removal of Trees.**

In the event the easement crosses forested Trust Lands Administration land, no trees may be cut or removed unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

**R850-40-1600. Easement Assignments.**

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

(a) the assignment is approved by the agency;

(b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and

(c) payment is made of either:

(i) the difference between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or

(ii) an alternate fee established by, and at the discretion of, the director. In allowing for any alternate fee the director shall consider the following factors:

(A) the fee established under 1(c)(i) would exceed $10,000, or would otherwise create an undue financial burden upon the applicant, or

(B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by

the agency. Any assignment made without such approval is void.

**R850-40-1700. Termination of Easement.**

Any easement granted by the agency across its land may be terminated in whole or in part for failure to comply with any term or conditions of the conveyance document or applicable laws or rules. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

**R850-40-1800. Abandonment.**

In order to facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the easement as provided in R850-4. This charge shall not be construed as rent. In lieu of this charge, the agency may allow a grantee to pay to the agency a one-time negotiated charge.

**KEY: natural resources, management, surveys, administrative procedure**

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| **October 18, 1999** | **53C-1-302** |
| **Notice of Continuation June 30, 1997** | **53C-2-201(1)(a)** |
| | **53C-4-203** |

**R884. Tax Commission, Property Tax.**
**R884-24P. Property Tax.**
**R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

**R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;

b) transportation costs;

c) installation charges and construction costs; and

d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that

is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;

(b) actual sales of like mineral by other taxpayers; or

(c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

**R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.**

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

**R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.**

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue,

calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

**R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

**R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.**

A. Definitions:

1. "Utah fair market value" means the fair market value of

that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

**R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-**

**302, and 59-2-704.**

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

**R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.**

A. "State Registered Appraiser," "State Licensed Appraiser", "State Certified General Appraiser," and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practicums.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).

2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:

a) Course A - Assessment Practice in Utah;

b) Course B - Fundamentals of Real Property Appraisal (IAAO);

c) Course C - Mass Appraisal of Land;

d) Course D - Building Analysis and Valuation;

e) Course E - Income Approach to Valuation (IAAO);

f) Course G - Development and Use of Personal Property Schedules;

g) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

h) Course I - Uniform Standards of Professional Appraisal Practice (USPAP).

C. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst. The designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors. An assessor, county employee, or state employee must hold the appropriate designation listed below to gain the authority to value property for ad valorem taxation purposes.

1. Ad Valorem Residential Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and I, and a comprehensive residential field practicum, and attainment of state registered, state licensed, or state certified appraiser status.

b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

2. Ad Valorem General Real Property Appraiser:

a) Requires the successful completion of Courses A, B, C, D, E, and I, and a comprehensive field practicum including both residential and commercial properties, and attainment of state registered, state licensed, or state certified appraiser status.

b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

3. Ad Valorem Personal Property Auditor/Appraiser:

a) Requires the successful completion of Courses A, B, G, and I, and a comprehensive auditing practicum.

b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

4. Ad Valorem Centrally Assessed Valuation Analyst:

a) Requires the successful completion of Courses A, B, E,

H, and I, and a comprehensive valuation practicum, and attainment of state registered, state licensed, or state certified appraiser status.

b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

D. Candidates must pass the final examination for each course with a grade of 70 points or more to be successful.

E. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

F. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

G. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

H. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

I. Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 or more.

J. All appraisal work performed by Tax Commission designated appraisers shall meet the current requirements of USPAP as promulgated by the Appraisal Foundation.

K. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only State Certified General Appraisers may appraise nonresidential properties.

2. All appraisal work shall meet the current requirements of USPAP.

L. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific registration or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

**R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.**

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of D.3.a) or D.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

**R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.**

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

i) an actual new growth value less than zero; and

ii) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. The following definitions and formulas shall be used in determining the certified tax rate:

1. Current year adjusted taxable value equals the taxable value for the current year adjusted for redevelopment; then

a) adjusted for estimated value losses due to appeals, using an average percentage loss for the past three years; then

b) adjusted for estimated collection losses.

2. The certified tax rate shall be computed as follows:

a) Last year's taxes collected, excluding redemptions, penalties, interest, roll-back taxes, and other miscellaneous collections.

b) Divided by the sum of the current year adjusted taxable value less adjusted new growth.

3. Entities required to set levies for more than one fund

must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

4. Exceptions to L.3. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

M. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

N. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

**R884-24P-26. Requirements of the Farmland Assessment Act of 1969 Pursuant to Utah Code Ann. Sections 59-2-501 through 59-2-515.**

A. A parcel of land less than five acres in size may qualify for assessment under the provisions of the Farmland Assessment Act (FAA) if it:

1. has ownership identical to and is used in conjunction with a qualifying parcel of five or more acres;

2. is in close proximity to the primary farm;

3. has a direct relationship to the total agricultural enterprise;

4. makes a significant contribution to the enterprise's total production; and

5. meets all other requirements set forth in Section 59-2-503.

B. FAA application forms shall provide for reporting of the current serial number, legal description, ownership, and all other pertinent information of the subject properties.

1. The assessor shall maintain all FAA records in the assessor's office. These records shall include the original year of application and clearly indicate the number of years these properties have been assessed and taxed under the FAA.

2. All parcels assessed and taxed under the provisions of the FAA shall be so designated on the assessment roll.

3. All FAA applications, including those resulting from changes in ownership, legal description, additions, or deletions, must be recorded.

C. For FAA purposes, a property may be considered contiguous even though it is severed by a public highway, unimproved road, fence, canal, or waterway.

D. Upon withdrawal or change in use of a parcel assessed under the provisions of the FAA, the assessor shall immediately calculate the amount of the roll-back tax due and the county shall bill the roll-back tax due.

1. The amount of the lien shall be shown on the recorded roll-back statement.

2. If the roll-back tax is not paid to the county treasurer within 30 days after billing, the county treasurer shall proceed to collect the amount due.

3. If, after a period of being exempt, the property is used for a purpose that does not qualify for assessment under the FAA, the roll-back provisions of FAA shall apply to the time the property was under the provisions of the FAA, up to a maximum of five years, less the number of years that the property was exempt.

E. Land that becomes ineligible for farmland assessment solely as a result of amendments to Sections 59-2-501 through 59-2-515 is not subject to the roll-back tax if the owner of that land notifies the county assessor of the land's ineligibility for farmland assessment on or before January 1, 1994.

F. Applications for assessment and taxation under the FAA may be made only by the owner of farm property. A lessee or purchaser of any parcel may arrange with the owner to farm such land, but the lessee or purchaser may not make application for farmland assessment in the lessee's or purchaser's name.

G. A leased parcel may be assessed under the FAA if it meets all of the eligibility requirements set forth in Section 59-2-503.

H. All applications for assessment under the provisions of the FAA shall be accompanied by documentation verifying the agricultural production of the property for the two years immediately preceding the year of application. The county assessor or the commission may request any additional information needed to determine eligibility under Section 59-2-503.

**R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Section 59-2-704.5.**

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-16-13.

B. The Tax Commission adopts the following standards of assessment performance regarding assessment level and uniformity:

1. Upon completion by the Division of the annual Assessment/Sales Taxation Study, the Division shall issue a corrective action order for a property class or subclass if the measure of central tendency is not within 10 percent of the legal level of assessment or the 95 percent confidence interval of the

measure of central tendency does not contain the legal level of assessment.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The adjustment shall be calculated by dividing the legal level of assessment by the measure of central tendency when uniformity meets the standards in B.2., or by the 95 percent confidence interval limit nearest the legal level of assessment when the standards in B.2. are not met.

2. Corrective action for the property being appraised under the cyclical appraisal plan for a given year shall be ordered by the Division if the measure of dispersion is outside the following limits for the coefficient of dispersion (COD), or for the coefficient of variation (COV) when data are normally distributed:

a) In urban counties, the limit for the COD is 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property.

b) In rural counties, the limit for the COD is 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

c) The limit for the COV is 1.25 times the COD.

d) Corrective action may contain language requiring a county to create or follow its cyclical appraisal plan.

e) If the sample size does not meet the requirements of B.3., or if there is reason to question the reliability of statistical data achieved under B.3., an alternate performance evaluation shall be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(1) the county's procedures for use and collection of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(2) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(3) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties;

(4) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

3. To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class or subclass, the acceptable sample size shall consist of 10 or more ratios.

a) To meet the minimum sample size, the study period may be extended.

b) A smaller sample size may be used if:

(1) that sample size is at least 10 percent of the class or subclass population; or

(2) both the Division and the county agree that the sample may produce statistics that infer corrective action appropriate to the class or subclass of property.

c) If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(1) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(2) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(3) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(4) the county's level of personnel training, ratio of appraisers to parcels, level of funding , and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by September first of each study cycle.

5. Corrective action may contain language requiring a county to create or follow its cyclical appraisal plan.

C. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action:

1. The Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders without Tax Commission approval. The Division may agree to any stipulation subsequent to an appeal subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the May 22 deadline.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the assessment roll closes on May 22 as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit by July 1 of each assessment cycle. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit. Any required adjustment shall appear on the notice required under Section 59-2-919 (4) and Tax Commission rule R884-24P-24 for the current year. This notice shall not be mailed to taxpayers until required adjustments are implemented.

**R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.**

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

**R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.**

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

**R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

**R884-24P-33. 2000 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.**

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the manufacturer's suggested retail price or the actual cost of the property when purchased new. For property purchased used the cost new may be estimated by the taxing authority.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. The assessor and the Commission may rely on other publications listing costs new or market values when valuing motor vehicles not found in the source guide recommended by the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item

retired from service.

a) Examples of property in the class include:

(1) barricades/warning signs;

(2) library materials;

(3) patterns, jigs and dies;

(4) pots, pans, and utensils;

(5) canned computer software;

(6) hotel linen;

(7) wood and pallets; and

(8) video tapes.

b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) Video tapes are valued at $15.00 per tape for the first year and $3.00 per tape thereafter.

TABLE 1

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 70% |
| 98 | 40% |
| 97 and prior | 10% |

2. Class 2 - Computer Dependent Machinery.

a) Machinery shall be classified as computer dependent machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice(s) break out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 87% |
| 98 | 71% |
| 97 | 60% |
| 96 | 51% |
| 95 | 44% |
| 94 | 36% |
| 93 | 27% |
| 92 and prior | 17% |

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

(1) office machines;

(2) alarm systems;

(3) shopping carts;

(4) ATM machines;

(5) small equipment rentals;

(6) rent-to-own merchandise;

(7) telephone equipment and systems;

(8) music systems;

(9) vending machines; and

(10) video game machines.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 83% |
| 98 | 67% |
| 97 | 51% |
| 96 | 34% |
| 95 and prior | 18% |

4. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

(1) furniture;

(2) bars and sinks:

(3) booths, tables and chairs;

(4) beauty and barber shop fixtures;

(5) cabinets and shelves;

(6) displays, cases and racks;

(7) office furniture;

(8) theater seats;

(9) water slides; and

(10) signs, mechanical and electrical.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 90% |
| 98 | 80% |
| 97 | 71% |
| 96 | 62% |
| 95 | 53% |
| 94 | 44% |
| 93 | 34% |
| 92 | 23% |
| 91 and prior | 11% |

5. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

(1) heavy duty trucks; and

(2) medium duty trucks.

b) Taxable value is calculated by applying the percent good factor against the actual cost of the property when purchased new or 75 percent of the manufacturer's suggested retail price. The taxable value for vehicles purchased used will be determined by applying the percent good factor to the value determined by the assessing authority. For state assessed vehicles, the value of attached equipment will be included in the

total vehicle valuation.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Trucks weighing two tons or more have a minimum value of $1,750 and a minimum tax of $26.25.

TABLE 6

| Year of Model | Percent Good of Cost New |
|---|---|
| 00 | 90% |
| 99 | 64% |
| 98 | 59% |
| 97 | 55% |
| 96 | 50% |
| 95 | 46% |
| 94 | 42% |
| 93 | 37% |
| 92 | 33% |
| 91 | 29% |
| 90 | 24% |
| 89 | 20% |
| 88 | 15% |
| 87 and prior | 11% |

6. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

a) Examples of property in this class include:

(1) medical and dental equipment and instruments;

(2) exam tables and chairs;

(3) high-tech hospital equipment;

(4) microscopes; and

(5) optical equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 92% |
| 98 | 83% |
| 97 | 76% |
| 96 | 69% |
| 95 | 62% |
| 94 | 55% |
| 93 | 47% |
| 92 | 38% |
| 91 | 29% |
| 90 | 19% |
| 89 and prior | 10% |

7. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

(1) manufacturing machinery;

(2) amusement rides;

(3) bakery equipment;

(4) distillery equipment;

(5) refrigeration equipment;

(6) laundry and dry cleaning equipment;

(7) machine shop equipment;

(8) processing equipment;

(9) auto service and repair equipment;

(10) mining equipment;

(11) ski lift machinery;

(12) printing equipment; and

(13) bottling or cannery equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 92% |
| 98 | 83% |
| 97 | 76% |
| 96 | 69% |
| 95 | 62% |
| 94 | 55% |
| 93 | 47% |
| 92 | 38% |
| 91 | 29% |
| 90 | 19% |
| 89 and prior | 10% |

8. Class 9 - Off-Highway Vehicles.

a) Examples of property in this class include:

(1) dirt and trail motorcycles;

(2) all terrain vehicles;

(3) golf carts; and

(4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new or suggested list price from the January-April NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Off-Highway Vehicles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 9

| Year of Model | Percent Good of Cost New |
|---|---|
| 00 | 90% |
| 99 | 61% |
| 98 | 58% |
| 97 | 55% |
| 96 | 51% |
| 95 | 48% |
| 94 | 45% |
| 93 | 42% |
| 92 | 39% |
| 91 | 35% |
| 90 | 32% |
| 89 | 29% |
| 88 | 26% |
| 87 and prior | 23% |

9. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear

and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 93% |
| 98 | 87% |
| 97 | 81% |
| 96 | 75% |
| 95 | 70% |
| 94 | 66% |
| 93 | 60% |
| 92 | 53% |
| 91 | 46% |
| 90 | 39% |
| 89 | 32% |
| 88 | 25% |
| 87 | 18% |
| 86 and prior | 10% |

10. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

(1) street motorcycles;

(2) scooters; and

(3) mopeds.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the suggested list price from the January-April edition of the NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Street motorcycles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 11

| Year of Model | Percent Good of Cost New |
|---|---|
| 00 | 90% |
| 99 | 70% |
| 98 | 68% |
| 97 | 65% |
| 96 | 63% |
| 95 | 61% |
| 94 | 58% |
| 93 | 56% |
| 92 | 54% |
| 91 | 51% |
| 90 | 49% |
| 89 | 46% |
| 88 | 44% |
| 87 | 42% |
| 86 | 39% |
| 85 | 37% |
| 84 | 34% |
| 83 and prior | 32% |

11. Class 12 - Computer Hardware.

a) Examples of property in this class include:

(1) data processing equipment;

(2) personal computers;

(3) main frame computers;

(4) computer equipment peripherals; and

(5) cad/cam systems.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

| Year of Model | Percent Good of Acquisition Cost |
|---|---|
| 99 | 86% |
| 98 | 57% |
| 97 | 36% |
| 96 | 23% |
| 95 | 14% |
| 94 and prior | 9% |

12. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

(1) construction equipment;

(2) excavation equipment;

(3) loaders;

(4) batch plants;

(5) snow cats; and

(6) power sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) 2000 model equipment purchased in 1999 is valued at 100 percent of acquisition cost.

TABLE 13

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 62% |
| 98 | 59% |
| 97 | 56% |
| 96 | 52% |
| 95 | 49% |
| 94 | 46% |
| 93 | 43% |
| 92 | 39% |
| 91 | 36% |
| 90 | 33% |
| 89 | 30% |
| 88 | 26% |
| 87 | 23% |
| 86 and prior | 20% |

13. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new derived from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

b) The 2000 percent good applies to 2000 models purchased in 1999.

TABLE 14

| Year of Model | Percent Good of Cost New |
|---|---|
| 00 | 90% |
| 99 | 73% |
| 98 | 70% |
| 97 | 66% |
| 96 | 62% |
| 95 | 59% |
| 94 | 55% |

| | |
|---|---|
| 93 | 51% |
| 92 | 48% |
| 91 | 44% |
| 90 | 41% |
| 89 | 37% |
| 88 | 33% |
| 87 | 30% |
| 86 | 26% |
| 85 | 23% |
| 84 and prior | 19% |

14. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products.

a) Examples of property in this class include:

(1) crystal growing equipment;

(2) die assembly equipment;

(3) wire bonding equipment;

(4) encapsulation equipment;

(5) semiconductor test equipment;

(6) clean room equipment;

(7) chemical and gas systems related to semiconductor manufacturing;

(8) deionized water systems;

(9) electrical systems; and

(10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 74% |
| 98 | 54% |
| 97 | 38% |
| 96 | 24% |
| 95 and prior | 10% |

15. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

(1) billboards;

(2) sign towers;

(3) radio towers;

(4) ski lift and tram towers;

(5) non-farm grain elevators; and

(6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 95% |
| 98 | 90% |
| 97 | 86% |
| 96 | 82% |
| 95 | 79% |
| 94 | 77% |
| 93 | 73% |
| 92 | 68% |
| 91 | 63% |
| 90 | 58% |
| 89 | 54% |
| 88 | 50% |
| 87 | 46% |
| 86 | 40% |
| 85 | 34% |
| 84 | 27% |
| 83 | 21% |
| 82 | 14% |
| 81 and prior | 7% |

16. Class 17 - Boats.

a) Examples of property in this class include:

(1) boats;

(2) boat motors; and

(3) personal watercraft.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the F.O.B. or P.O.E. price from the ABOS Marine Blue Book.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Boats have a minimum value of $500 and a minimum tax of $7.50.

TABLE 17

| Year of Model | Percent Good of Cost New |
|---|---|
| 00 | 90% |
| 99 | 69% |
| 98 | 67% |
| 97 | 65% |
| 96 | 62% |
| 95 | 60% |
| 94 | 58% |
| 93 | 55% |
| 92 | 53% |
| 91 | 51% |
| 90 | 48% |
| 89 | 46% |
| 88 | 44% |
| 87 | 41% |
| 86 | 39% |
| 85 | 37% |
| 84 | 34% |
| 83 | 32% |
| 82 | 30% |
| 81 | 27% |
| 80 and prior | 25% |

17. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

(1) travel trailers;

(2) truck campers; and

(3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the original cost new or, for travel trailers, from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Trailers and truck campers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 18

| Year of Model | Percent Good of Cost New |
|---|---|
| 00 | 90% |
| 99 | 70% |
| 98 | 67% |
| 97 | 64% |
| 96 | 60% |
| 95 | 57% |
| 94 | 53% |
| 93 | 50% |
| 92 | 46% |
| 91 | 43% |
| 90 | 40% |
| 89 | 36% |
| 88 | 33% |
| 87 | 29% |
| 86 | 26% |
| 85 | 22% |
| 84 and prior | 19% |

18. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

(1) oil and gas exploration equipment;

(2) distillation equipment;

(3) wellhead assemblies;

(4) holding and storage facilities;

(5) drill rigs;

(6) reinjection equipment;

(7) metering devices;

(8) cracking equipment;

(9) well-site generators, transformers, and power lines;

(10) equipment sheds;

(11) pumps;

(12) radio telemetry units; and

(13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 93% |
| 98 | 86% |
| 97 | 80% |
| 96 | 74% |
| 95 | 69% |
| 94 | 63% |
| 93 | 56% |
| 92 | 48% |
| 91 | 40% |
| 90 | 33% |
| 89 | 26% |
| 88 | 18% |
| 87 and prior | 10% |

19. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:

(1) commercial trailers;

(2) utility trailers;

(3) cargo utility trailers;

(4) boat trailers;

(5) converter gears;

(6) horse and stock trailers; and

(7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 2000 percent good applies to 2000 models purchased in 1999.

d) Commercial and utility trailers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 21

| Year of Model | Percent Good of Cost New |
|---|---|
| 00 | 95% |
| 99 | 70% |
| 98 | 67% |
| 97 | 63% |
| 96 | 59% |
| 95 | 55% |
| 94 | 51% |
| 93 | 47% |
| 92 | 44% |
| 91 | 40% |
| 90 | 36% |
| 89 | 32% |
| 88 | 28% |
| 87 | 25% |
| 86 | 21% |
| 85 | 17% |
| 84 and prior | 13% |

20. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

21. Class 23 - Aircraft Not Listed in the Bluebook Price Digest Subject to the Uniform Tax.

a) Examples of property in this class include:

(1) kit-built aircraft;

(2) experimental aircraft;

(3) gliders;

(4) hot air balloons; and

(5) any other aircraft requiring FAA registration.

b) Aircraft subject to the uniform tax, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

| Year of Acquisition | Percent Good of Acquisition Cost |
|---|---|
| 99 | 75% |
| 98 | 71% |

| | |
|---|---|
| 97 | 67% |
| 96 | 63% |
| 95 | 59% |
| 94 | 55% |
| 93 | 51% |
| 92 | 47% |
| 91 | 43% |
| 90 | 39% |
| 89 | 35% |
| 88 and prior | 31% |

22. Class 24 - Leasehold Improvements.

a) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

(1) walls and partitions;
(2) plumbing and roughed-in fixtures;
(3) floor coverings other than carpet;
(4) store fronts;
(5) decoration;
(6) wiring;
(7) suspended or acoustical ceilings;
(8) heating and cooling systems; and
(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

| Year of Installation | Percent of Installation Cost |
|---|---|
| 99 | 94% |
| 98 | 88% |
| 97 | 82% |
| 96 | 77% |
| 95 | 71% |
| 94 | 65% |
| 93 | 59% |
| 92 | 54% |
| 91 | 48% |
| 90 | 42% |
| 89 | 36% |
| 88 and prior | 30% |

F. The provision of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

**R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.**

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

**R884-24P-35. Annual Affidavit of Exempt Use Pursuant to Utah Code Ann. Section 59-2-1101.**

A. The owner of property receiving a full or partial exemption from property tax based on exclusive use for religious, charitable or educational purposes, is required to file the annual affidavit prescribed in Utah Code Ann. Section 59-2-1101.

**R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.**

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;
2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;
3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and
4. itemized tax rate information for each taxing entity and total tax rate.

**R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.**

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

**R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).**

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed

separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

**R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.**

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

**R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.**

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

**R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.**

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

**R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-**

**1101.**

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. Machinery and equipment used for processing of agricultural products or other nonproduction activities are not exempt.

**R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.**

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

**R884-24P-49. Calculating the Utah Apportioned Value of a Private Rail Car Company Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Average market value per rail car" means the total rail car market value divided by the total number of rail cars in the rail car company's fleet.

2. "Total rail car market value" means the sum of the acquisition cost by year for rail cars purchased by the rail car company multiplied by the appropriate percent good factors contained in Class 10 of R884-24P-33, Personal Valuation Guides and Schedules, plus the sum of betterments by year depreciated on a 14-year straight line method.

3. "Total system car miles" means both loaded and empty miles accumulated during the prior calendar year by all the rail cars in the rail company's fleet.

4. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all the rail cars in the rail company's fleet.

5. "Utah percent of the system factor" means the Utah car miles divided by the total system car miles.

B. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor

is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the total rail car market value.

C. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner:

1. Calculate the number of rail cars allocated to Utah under the percent of system factor.

a) Multiply the Utah percent of system factor by the total number of in-service rail cars in the company's fleet.

b) Multiply the product obtained in C.1.a) by 50 percent.

2. Calculate the number of rail cars allocated to Utah under the time speed factor.

a) Divide Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in C.2.a) by the percent of in-service rail cars in the company's fleet.

c) Multiply the product obtained in C.2.b) by 50 percent.

3. Add the number of rail cars allocated to Utah under the percent of system factor, calculated in C.1.b), and the number of rail cars allocated to Utah under the time speed factor, calculated in C.2.c), and multiply that sum by the average market value per rail car.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1997.

**R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

**R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103.**

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2. and F.4., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

**R884-24P-53. 1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.**

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

B. All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

| | | |
|---|---|---|
| 1) | Box Elder | 700 |
| 2) | Cache | 625 |
| 3) | Carbon | 550 |
| 4) | Davis | 725 |
| 5) | Emery | 450 |
| 6) | Iron | 675 |
| 7) | Kane | 400 |
| 8) | Millard | 700 |
| 9) | Salt Lake | 650 |
| 10) | Utah | 650 |
| 11) | Washington | 650 |
| 12) | Weber | 725 |

(Note: Some counties do not have Irrigated I property.)

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

| | | |
|---|---|---|
| 1) | Box Elder | 600 |
| 2) | Cache | 525 |
| 3) | Carbon | 450 |
| 4) | Davis | 625 |
| 5) | Duchesne | 475 |
| 6) | Emery | 350 |
| 7) | Grand | 375 |
| 8) | Iron | 575 |
| 9) | Juab | 425 |
| 10) | Kane | 300 |
| 11) | Millard | 600 |
| 12) | Salt Lake | 500 |
| 13) | Sanpete | 475 |
| 14) | Sevier | 525 |
| 15) | Summit | 450 |
| 16) | Tooele | 425 |
| 17) | Utah | 550 |
| 18) | Wasatch | 450 |
| 19) | Washington | 550 |
| 20) | Weber | 625 |

(Note: Some counties do not have Irrigated II property.)

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

| | | |
|---|---|---|
| 1) | Beaver | 425 |
| 2) | Box Elder | 450 |
| 3) | Cache | 375 |
| 4) | Carbon | 300 |
| 5) | Davis | 475 |
| 6) | Duchesne | 325 |
| 7) | Emery | 200 |
| 8) | Garfield | 150 |
| 9) | Grand | 225 |
| 10) | Iron | 425 |
| 11) | Juab | 275 |
| 12) | Kane | 150 |
| 13) | Millard | 450 |
| 14) | Morgan | 375 |
| 15) | Piute | 350 |
| 16) | Rich | 225 |
| 17) | Salt Lake | 350 |
| 18) | San Juan | 175 |
| 19) | Sanpete | 325 |
| 20) | Sevier | 375 |
| 21) | Summit | 300 |
| 22) | Tooele | 400 |
| 23) | Uintah | 350 |
| 24) | Utah | 400 |
| 25) | Wasatch | 300 |
| 26) | Washington | 400 |
| 27) | Wayne | 225 |
| 28) | Weber | 475 |

(Note: Daggett County does not have Irrigated III property.)

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

| | | |
|---|---|---|
| 1) | Beaver | 325 |
| 2) | Box Elder | 350 |
| 3) | Cache | 275 |
| 4) | Carbon | 200 |
| 5) | Daggett | 250 |
| 6) | Davis | 375 |
| 7) | Duchesne | 225 |
| 8) | Emery | 100 |
| 9) | Garfield | 50 |
| 10) | Grand | 125 |
| 11) | Iron | 325 |
| 12) | Juab | 175 |
| 13) | Kane | 50 |
| 14) | Millard | 350 |
| 15) | Morgan | 275 |
| 16) | Piute | 250 |
| 17) | Rich | 175 |
| 18) | Salt Lake | 250 |

| | | |
|---|---|---|
| 19) | San Juan | 75 |
| 20) | Sanpete | 225 |
| 21) | Sevier | 275 |
| 22) | Summit | 200 |
| 23) | Tooele | 150 |
| 24) | Uintah | 250 |
| 25) | Utah | 300 |
| 26) | Wasatch | 200 |
| 27) | Washington | 300 |
| 28) | Wayne | 125 |
| 29) | Weber | 375 |

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

| | | |
|---|---|---|
| a) | Box Elder | 570 |
| b) | Cache | 630 |
| c) | Davis | 620 |
| d) | Utah | 525 |
| e) | Washington | 750 |
| f) | Weber | 610 |
| g) | All other counties | 575 |

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

| | | |
|---|---|---|
| 1) | Beaver | 160 |
| 2) | Box Elder | 165 |
| 3) | Cache | 210 |
| 4) | Carbon | 115 |
| 5) | Daggett | 140 |
| 6) | Davis | 210 |
| 7) | Duchesne | 140 |
| 8) | Emery | 115 |
| 9) | Garfield | 110 |
| 10) | Grand | 110 |
| 11) | Iron | 160 |
| 12) | Juab | 115 |
| 13) | Kane | 110 |
| 14) | Millard | 115 |
| 15) | Morgan | 140 |
| 16) | Piute | 135 |
| 17) | Rich | 115 |
| 18) | Salt Lake | 165 |
| 19) | Sanpete | 165 |
| 20) | Sevier | 165 |
| 21) | Summit | 165 |
| 22) | Tooele | 165 |
| 23) | Uintah | 140 |
| 24) | Utah | 165 |
| 25) | Wasatch | 165 |
| 26) | Washington | 160 |
| 27) | Wayne | 135 |
| 28) | Weber | 210 |

(San Juan county does not have any Meadow IV property.)

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

| | | |
|---|---|---|
| 1) | Beaver | 70 |
| 2) | Box Elder | 100 |
| 3) | Cache | 210 |
| 4) | Carbon | 75 |
| 5) | Daggett | 75 |
| 6) | Davis | 140 |
| 7) | Duchesne | 100 |
| 8) | Emery | 80 |
| 9) | Garfield | 75 |
| 10) | Grand | 75 |
| 11) | Iron | 105 |
| 12) | Juab | 110 |
| 13) | Kane | 75 |
| 14) | Millard | 135 |
| 15) | Morgan | 195 |
| 16) | Piute | 75 |
| 17) | Rich | 140 |
| 18) | Salt Lake | 90 |
| 19) | San Juan | 55 |
| 20) | Sanpete | 100 |
| 21) | Sevier | 80 |
| 22) | Summit | 80 |
| 23) | Tooele | 100 |
| 24) | Uintah | 115 |
| 25) | Utah | 80 |
| 26) | Wasatch | 80 |
| 27) | Washington | 65 |
| 28) | Wayne | 80 |
| 29) | Weber | 185 |

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

| | | |
|---|---|---|
| 1) | Beaver | 35 |
| 2) | Box Elder | 65 |
| 3) | Cache | 175 |
| 4) | Carbon | 40 |
| 5) | Daggett | 40 |
| 6) | Davis | 105 |
| 7) | Duchesne | 65 |
| 8) | Emery | 45 |
| 9) | Garfield | 40 |
| 10) | Grand | 40 |
| 11) | Iron | 70 |
| 12) | Juab | 75 |
| 13) | Kane | 40 |
| 14) | Millard | 100 |
| 15) | Morgan | 160 |
| 16) | Piute | 40 |
| 17) | Rich | 105 |
| 18) | Salt Lake | 55 |
| 19) | San Juan | 20 |
| 20) | Sanpete | 65 |
| 21) | Sevier | 45 |
| 22) | Summit | 45 |
| 23) | Tooele | 65 |
| 24) | Uintah | 80 |
| 25) | Utah | 45 |
| 26) | Wasatch | 45 |
| 27) | Washington | 30 |
| 28) | Wayne | 45 |
| 29) | Weber | 150 |

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

TABLE 9
Grazing Land

a) Graze I
1) All Counties 40
b) Graze II
2) All Counties 12
c) Graze III
3) All Counties 8
d) Graze IV
4) All Counties 4

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 10
Nonproductive Land

a) Nonproductive Land
1) All Counties 4

**R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.**

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

**R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301, and 59-2-801.**

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Customer Service Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(3)

"Principal route:" means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

**R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.**

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

3. "Unpaid judgment" means the taxpayer awarded the judgment has not received payment of the judgment amount.

B. For purposes of Section 59-2-924(2)(a)(v), a judgment must be unpaid when the taxing entity holds its final meeting for setting property tax rates.

C. To determine whether a judgment is less than the smaller of $1,000 or one percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year, a taxing entity:

1. shall measure its pro rata share of the judgment, including interest, against the measure set forth in C.; and

2. may not aggregate judgments prior to applying the test set forth in C.

D. The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by D.1. and D.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

E. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

F. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

G. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

a) the name of the taxpayer awarded the judgment;

b) the appeal number of the judgment; and

c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

a) a copy of all judgment levy newspaper advertisements required;

b) the dates all required judgment levy advertisements were published in the newspaper;

c) a copy of the final resolution imposing the judgment levy;

d) a copy of the Notice of Property Valuation and Tax Changes, if required; and

e) any other information required by the Tax Commission.

H. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

**R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

**R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

**R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.**

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-401.5, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current calendar year.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.**

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal

property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions:

1. "Attributes" of property include all defining characteristics inseparable from real property and tangible personal property, such as size, location and other attributes inherent in the property itself.

2. "Cost regulated utility" means any public utility assessable by the Commission pursuant to Section 59-2-201, whose allowed rates are determined by a state or federal regulatory commission by reference to a rate of return applied to rate base where the rate of return and rate base are set by the regulatory body.

3. "Depreciation" is the loss in value from any cause. There are two distinct types of depreciation encountered in the appraisal of properties subject to this rule: accounting depreciation and appraisal depreciation. Accounting depreciation is often called "book depreciation" and is generally calculated in accordance with generally accepted accounting principles or regulatory guidelines. Appraisal depreciation is the total loss in property value from any cause. There are three recognized types of appraisal depreciation: physical deterioration, functional obsolescence and external obsolescence. Physical deterioration is the physical wearing out of the property evidenced by wear and tear, decay and structural defects. Physical deterioration includes the loss in value due to normal aging. Functional obsolescence is the loss in value due to functional deficiencies or inadequacies within the property depicted as the inability of the property to perform adequately the functions for which it was originally designed. External (economic) obsolescence is the loss in value from causes outside the boundaries of the property and is generally incurable. Appraisal depreciation is often called "accrued depreciation."

4. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

5. "Property" means property that is subject to assessment and taxation according to its value but does not include intangible property. Intangible property is property that is capable of private ownership separate from tangible property and includes moneys, credits, bonds, stocks, representative property, franchises, licenses, trade names, copyrights, and patents.

6. "Property which operates as a unit" or "unitary property" means property that is functionally or physically integrated in operation and construction and functions as an economic unit or "one thing."

7. "Rate Base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

8. "State Assessed Utility and Transportation Properties" include all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; all operating property of an airline, air charter service, and air contract service; and all property of public utilities as defined in Utah Code Ann. Section 59-2-102(21). For property tax valuation purposes, these properties may generally be classified as telecommunication properties, energy properties, and transportation properties, some of which may be cost regulated utilities.

a. "Telecommunication properties" means all telephone properties and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

b. "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations and other similar type entities and are assessable by the Commission

pursuant to Section 59-2-201.

c. "Transportation properties" means all airline, air charter service, air contract service, railroad, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

B. General Valuation Principles. State assessed utility and transportation properties shall be assessed at fair market value for property tax purposes based on generally accepted appraisal theory and the provisions of this rule.

1. Taxable Property and Unit Methodologies. All property, as defined in this rule, is subject to assessment, and if the property operates together as a unit, the assemblage or enhanced value attributable to the taxable property operating together should be included in the assessed value.

a. The preferred methods to determine the fair market value for all state assessed utility and transportation property are a cost indicator and a yield capitalization income indicator.

b. Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary in order to more accurately estimate the fair market value, which includes assemblage or enhanced value, of properties that operate together as a unit.

c. The direct capitalization income method and the stock and debt market method may tend to capture the value of intangible property, as defined in this rule, at higher levels than other methods. Accordingly, the value attributable to such intangible property must be identified and removed from value. To the extent such intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the correlation process, as set forth in Section B.5.

d. No final estimate of value will be imposed or considered unless the weighting percentages of the various value indicators used to correlate the final estimate of value are disclosed in writing. Disclosure of the weighting percentages also includes a written explanation describing why a party weighted the particular indicators of value by the percentages so indicated.

e. A party may challenge a final estimate of value by proposing a different valuation methodology or weighting formula that establishes a more accurate final estimate of value. A challenge to a final estimate of value will be considered effective only if the proposed valuation methodology or weighting formula demonstrates, by a preponderance of the evidence, that it establishes a more accurate estimate of fair market value.

2. Cost Indicator. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. Generally a cost indicator may be developed under one or more of the following approaches; replacement cost new less depreciation ("RCNLD"), reproduction cost less depreciation ("Reproduction Cost"), and historic cost less depreciation ("HCLD").

a. RCNLD. Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout.

b. Reproduction Cost. Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying all the deficiencies, superadequacies, and obsolescence of the subject property. Reproduction cost shall be adjusted for appropriate depreciation.

c. HCLD. The HCLD approach is the historic cost less depreciation, which may, depending upon the industry, be trended to current costs. Only trending indexes commonly recognized by the industry may be used as a trending adjustment to HCLD.

d. In the mass appraisal environment for state assessed utility and transportation property, RCNLD is impractical to implement. The preferred cost indicator of value is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value. A challenge to the use of HCLD as the cost indicator of value will be considered effective only if the proposed cost indicator of value demonstrates, by a preponderance of the evidence, that it establishes a more accurate cost estimate of value.

3. Income Indicator. An income indicator recognizes that value is created by the expectation of future benefits to be derived from the property.

a. Yield Capitalization Approach. This income indicator shall be determined by converting future cash flows to present value as of the lien date by capitalizing future estimated cash flows at an appropriate discount rate. The yield capitalization formula is CF/(k-g), where "CF" is cash flow, "k" is the nominal, risk adjusted discount rate, and "g" is the expected future growth of the cash flow in the numerator. Each of these terms is defined below. A discounted cash flow method in which (i) individual years' cash flow are projected, (ii) the formula CF/(k-g) is used to compute terminal value, and (iii) the projected cash flows and terminal value are discounted back to present value; may be used as a substitute income valuation approach for the above yield capitalization approach when the use of a single representative annual cash flow is clearly inappropriate.

(1) Cash Flow ("CF"). Cash flow is restricted to cash flows provided by the operating assets in existence on the lien date, together with any replacements intended to maintain, and not expand or modify, the existing capacity or function thereof. Cash flow is calculated as net operating income (NOI) plus noncash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to net working capital necessary to achieve the expected growth "g". The cash flows should reflect the cash flows available to pay sources of financing for the assets in existence on the lien date or an equivalent pool of assets. The capital expenditures should include only those expenditures necessary to replace or maintain existing plant and should not include any expenditures intended for expansion or productivity and capacity enhancements. If a taxpayer is unable to separate replacement capital expenditures from expansion capital expenditures, the taxpayer must provide the Property Tax Division sufficient data to adjust the "g" in the yield capitalization formula appropriately. If the taxpayer is unable to provide data to adjust the "g", the Property Tax Division will estimate an adjustment to cash flows or "g" based

on the best information available. Information necessary for the Property Tax Division to calculate the appropriate cash flow shall be summarized and submitted to the Property Tax Division by March 1 on a form provided by the Property Tax Division. The calculation of Cash Flow may be illustrated by the following formula:

CF = NOI + Noncash Charges - Replacement Capital Expenditures - Additions to Net Working Capital

(a) Cash flow is the projected cash flow for the next year and may be estimated by reviewing the last five years' cash flows, forecasting future cash flows, or a combination of both.

(b) If cash flows for a subsidiary company are not available or are not allocated between subsidiary companies on the parent company's cash flow statements, then a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. Whichever criterion is chosen, the subsidiary's total is divided by the parent's total to produce a percentage that is applied to the parent's total cash flow to estimate the subsidiary's cash flow.

(c) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, Property Tax Division may estimate cash flow using the best information available.

(2) Discount Rate ("k"). The discount rate shall be based upon a weighted average cost of capital considering current market debt rates and equity yields determined by recognized market measurements such as capital asset pricing model ("CAPM"), Risk Premium, Dividend Growth models, or other recognized models. The weighting of debt and equity should reflect the market value weightings of comparable companies in the industry.

(a) Cost of Debt. The cost of debt should reflect the current market (yield to maturity) of debt with the same credit rating as the subject company.

(b) Cost of Equity. In the discount rate, the CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 75% in the correlation.

(c) CAPM. The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(i) Risk Free Rate ("R(f)"). The risk free rate shall be the current market rate on 20 year Treasury bonds.

(ii) Beta. The beta should reflect an average or value-weighted average of comparable companies. The beta of the comparable companies should be drawn from Value Line or a comparable source. Once a source is chosen, beta should be drawn consistently from this source. However, the beta of the specific assessed property should also be considered.

(iii) Risk Premium. The risk premium shall be obtained from the current Ibbotson Associates study. The risk premium shall be the arithmetic average of the spread between the return on stocks and long term bonds for the most recent 40 years.

(3) Growth Rate ("g"). The growth rate "g" is the expected future growth of the cash flow in the numerator of the formula given in CF/(k-g). If insufficient information is available to the Property Tax Division, either from public sources or from the taxpayer, to determine an appropriate "g", then "g" will be the expected inflationary rate as given by the Gross Domestic Product Price Deflator obtained in Value Line. The inflationary rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b. Direct Capitalization Approach. This is an income approach that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by an appropriate income capitalization rate or by multiplying the normalized income estimate by an appropriate factor.

4. Market Indicator. The market value of property is directly related to the prices of comparable, competitive properties; or the sale of the specific assessed property when such information is available. The market or sales comparison approach is estimated by comparing the subject property to similar properties that have recently sold. Because sales of state assessed utility and transportation properties are infrequent, the stock and debt approach may be used as a surrogate to the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liability plus shareholder's equity.

5. Correlation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, and quality or reliability of data and the strength and weaknesses of each value indicator. The percentage weight assigned to each indicator in the correlation process shall be established, disclosed and explained as set forth in Section B.1.

6. Non-operating property. Property that is not necessary to the operation of the state assessed utility or transportation properties and is assessed by the local county assessor, and property separately assessed by the Property Tax Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

7. Leased property. All tangible operating property owned, leased, or used by state assessed utilities and transportation companies is subject to assessment.

8. Property Specific Considerations. The Commission recognizes that because of unique differences between certain types of properties and industries, modifications or alternatives to these general cost and yield income indicators, as set forth in Sections C., D., and E., may be required for the following industries: (a) cost regulated utilities, (b) telecommunications properties, and (c) transportation properties.

C. Cost regulated utilities:

1. Cost Indicator. The HCLD approach is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. The HCLD approach is calculated by taking the historic cost less deprecation as reflected in the state assessed utility's net plant accounts, and by then (1) subtracting intangible property, (2) subtracting any items not included in the state assessed utility's rate base (e.g., deferred federal income taxes ("DFIT") and, if appropriate, acquisition adjustments), and (3) adding any taxable items not included in the state assessed utility's net plant account or in rate base.

a. Deferred Federal Income Taxes. DFIT is an accounting entry that reflects a timing difference for reporting income and expenses. Accumulated DFIT reflects the difference between the

use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude DFIT from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by DFIT for rate base regulated companies, DFIT may be removed from HCLD as a surrogate measure for economic obsolescence.

b. DFIT can be a surrogate measure for economic obsolescence. If a study is prepared that authenticates actual economic obsolescence and is approved by the Commission, the amount of the actual economic obsolescence will be subtracted from HCLD to develop the cost indicator of value.

2. Income indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

D. Telecommunications Companies:

1. Cost Indicator. This includes the operating property of local exchange carriers, local access providers. long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers. The HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

2. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

E. Transportation Properties. These include the operating property of long haul and short line railroads, commercial airlines, including major and small passenger carriers and major and small air freighters.

1. Railroads.

a. Cost Indicator. The Railroad industry is not rate base regulated and does not typically have a majority of its investment in property of recent vintage. Accordingly, for Railroads, the cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value. Cost valuation should be based on trended historical costs less depreciation. Additions should be made for material and supplies and operating leased equipment. Deductions should be made for all capitalized intangible property such as customized computer software. All forms of depreciation should be measured and appropriately deducted.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

2. Commercial airlines, including major and small passenger carriers and major and small air freighters.

a. Cost Indicator. The trended HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

F. This rule shall have an effective date of January 1, 1999.

**R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.**

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

**R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.**

A. For purposes of Sections 59-2-1104 and 59-2-1106, taxable value of vehicles subject to the Section 59-2-405.1 uniform fee shall be calculated by dividing the Section 59-2-405.1 uniform fee the vehicle is subject to by .015.

**KEY: taxation, personal property, property tax, appraisal**
**October 19, 1999** **Art. XIII, Sec 2**
**Notice of Continuation May 8, 1997** **9-2-201**
**11-13-25**
**41-1a-202**
**41-1a-301**
**59-1-1**
**59-1-210**
**59-2-13**
**59-2-102**
**59-2-103**
**59-2-104**
**59-2-201**
**59-2-210**
**59-2-211**
**59-2-219**
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**59-2-302**
**59-2-303**
**59-2-305**
**59-2-306**
**59-2-401**
**59-2-402**
**59-2-404**
**59-2-405**
**59-2-406**
**59-2-501 through 59-2-515**
**59-2-701**
**59-2-702**
**59-2-703**
**59-2-704.5**

**59-2-705**
**59-2-801**
**59-2-918 through 59-2-924**
**59-2-1002**
**59-2-1005**
**59-2-1101**
**59-2-1104**
**59-2-1106**
**59-2-1107 through 59-2-1109**
**59-2-1113**
**59-2-1202**
**59-2-1202(5)**
**59-2-1302**
**59-2-1303**
**59-2-1317**
**59-2-1328**
**59-2-1330**
**59-2-1347**
**59-2-1351**
**59-3-1**
**59-5-1**
**59-5-501 through 59-5-515**
**63-18A-1 through 63-18A-6**

**R909. Transportation, Motor Carrier.**

**R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.**

**R909-75-1. Adoption of Federal Regulations.**

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, of the October 1, 1998, edition as printed in the Regulations Management Corporation Service, are incorporated by reference. In addition, amendments to the same edition, which appear November 1, 1998, December 1, 1998, January 1, 1999, February 1, 1999, March 1, 1999, April 1, 1999, and May 1, 1999, are incorporated by reference within this rule. This applies to all private, common, and contract carriers by highway in commerce.

**KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulation**

**October 4, 1999 72-9-103**

**Notice of Continuation April 22, 1997 72-9-104**

**R986. Workforce Services, Employment Development.**
**R986-218. Financial Assistance General Assistance/Self-Sufficiency Program.**
**R986-218-800. Incorporation by Reference.**

Unless otherwise indicated, all references to 45 CFR refer to the Code of Federal Regulations, 45, Parts 200 through 499, revised as of October 1, 1990. All referenced Federal Regulation are available for public review at the Division of Employment Development, 140 East 300 South, Salt Lake City, Utah 84103.

**R986-218-801. Authority.**

The department requires compliance with Section 35A-3-401, Utah Code Annotated, 1953.

**R986-218-802. Description.**

1. The General Assistance Self-Sufficiency Program (GASSP) provides temporary financial support to single persons and couples while they are overcoming the condition making them unemployable or while they are qualifying for SSI. The GASSP Program provides financial support on a time limited basis, not to exceed 24 months out of any 60 month period, retroactive to March 1, 1998, while participants are involved in medical and/or mental health treatment to overcome the limitations keeping them from employment.

2. This financial supportive service is based on the concept of mutual responsibility. The client has the responsibility to make efforts to overcome the condition making him or her unemployable and to move towards increasing their income or to qualify for other benefits.

3. Less capable clients may receive special help from department staff in applying for these other benefits and participating in employment activities.

4. Department staff have the responsibility to assist clients in increasing their income through employment and/or in securing other benefits.

5. To qualify, individuals must:

a. Be at least 18 years old or emancipated.

b. Be unemployable because of a physical or psychological impairment or they must be unable to work at a job at least 23 hours weekly at minimum wage.

c. Participate in rehabilitation and employment services and follow through on efforts to qualify for other benefits for which they may be eligible. This includes SSI, Social Security Disability, Veterans Benefits, Workers' Compensation.

6. A person eligible for Bureau of Indian Affairs (BIA) assistance is not eligible for GASSP.

7. TANF rules R986-211 through R986-215 apply unless a different rule is stated below.

**R986-218-810. Program Standards.**

1. The following definitions apply to this section:

a. "Bona fide offer of employment" means an offer of employment was given and was made in good faith.

b. "Good cause for refusing employment" means a definite job offer was not made; the wages did not meet minimum wage requirements; the employment was a risk to the health or safety of the worker; the employment lacked workmen's compensation benefits; the position offered is vacant due to a strike, lockout or other bona fide labor dispute; or the individual is unable to work for physical reasons or for lack of transportation.

2. Age and Factually Emancipated Child:

a. The individual must be at least eighteen years of age or emancipated.

b. A person who is not legally emancipated may claim to be factually emancipated. The person must live independently from his or her parents or guardian and have been economically self-supporting for the past six months.

c. If the parents are available the local department office shall contact them.

i. The child is ineligible if the parents will support him or her.

ii. If the parents refuse to support the child or are unavailable, child support enforcement procedures must be followed.

iii. If the applicant refuses without good cause to cooperate in locating the parents, he or she is ineligible.

3. All applicants are determined employable unless they meet the unemployable criteria.

4. Unemployable criteria:

The applicant must provide current medical evidence that he or she is not employable due to a physical or mental impairment. The local department office may accept a licensed Medical Doctor (MD) or a Doctor of Osteopathy (DO) statement, a licensed/certified psychologist statement, a Utah Medical Assistance Program statement, or a statement from another agency involved in disability determination, such as, the Veterans Administration or the Division of Rehabilitation Services. The local department office may require a second opinion by a specific person or agency. The cost of a physical examination requested by the department will be paid by the local department office.

a. If the medical report says the client can work with no limitations or that the limitations will last less than 30 days from the date of the onset of the physical or mental impairment, the case will be denied.

b. If the medical report indicates the applicant is unable to work at least 23 hours weekly for 30 days or more from the date of the onset of physical or mental impairment, he or she is considered unemployable.

c. If the illness or incapacity may last longer than a year, then the person must apply for SSDI/SSI benefits.

5. Employment Focused Case Management:

a. All applicants and their spouses, at time of application, and recipients must be interviewed by an employment counselor and complete an employment plan before financial benefits can be authorized. Recipients must actively follow through on the plan.

b. A person is exempt from these requirements if the person has qualified for SSI and is waiting for the first check.

6. SSI and Other Benefits:

a. To be eligible for GA, applicants/recipients must apply for and follow through with any other programs and benefits for which they may be eligible. These include Supplemental Security Income, Social Security, Veterans Benefits, and Worker Compensation.

b. If applicant/recipient seems to meet SSI requirements, the department follows the instructions in paragraphs 7 and 8

below. If an applicant/recipient appears to meet Worker Compensation requirements, the Department follows the instructions in item number 10 below.

7. Interim Aid for SSI Applicants:

The person must complete Form 75, Agreement to Repay Interim Assistance, before he or she applies for SSI.

i. The case is closed when the Office of Recovery Services (ORS) reports the receipt of the first SSI check.

ii. If an individual receives a three month presumptive eligibility SSI payment, the GA case is closed when this begins.

iii. The case is closed if the client fails to follow through on the SSI application.

iv. The date of SSI recoupment is also the date the Department receives the signed Authorization Form 75 from the client.

v. The Department will recover, from either the initial SSI check or from the recipient, the interim assistance paid to an individual for the period of time taken to determine eligibility for SSI. This will be done in both initial claims and post-eligibility situations.

8. SSI Denials and Appeals:

Recipients must appeal, at least to the Social Security Administrative Law Judge (ALJ) level, an SSI denial decision. Any individual who has received an Unfavorable Decision by the Administrative Law Judge (ALJ) from Social Security is not eligible for financial support, unless an unrelated physical/mental health condition develops and is verified.

9. SSI/SSDI Terminations due to Drug and Alcohol Abuse (DAA):

The GASSP Program will mirror the rules and regulations from the Social Security Administration as outlined in Public Law 104-121:

i. Drug addiction and/or alcoholism alone are not considered as conditions for unemployment under the General Assistance Program.

ii. Proof on another disabling impairment(s) substantiated with medical evidence, must be provided and all other factors of eligibility met in order to qualify for financial benefits under the General Assistance Program.

iii. Individual with DAA should be referred to resource agencies which would assist them with treatment.

10. Lien Agreement for Worker Compensation Applicants:

The person must complete Form 75w, Repayment of General Assistance and Lien Agreement, before he or she can be approved for General Assistance.

i. The Department will recover from either the insurance carrier or from the recipient, the lesser of the General Assistance paid to the client or the Temporary Total Disability Compensation less Attorney's fees paid to an individual for each month that the client received both General Assistance and Temporary Total Disability Compensation.

ii. Recipients must appeal a Worker Compensation denial decision if the local department office worker feels there is a reasonable chance for a successful appeal.

11. Rehabilitation and Employment Performance Requirements:

a. To promote rehabilitation and employment, the employment counselor or designated staff may require a GA recipient to meet one or more employment activity requirements. Employment activities include:

i. Participation in Division of Rehabilitation (DRS) services.

ii. Participation in medical or mental health care or an alcoholism or drug treatment program may be required as appropriate.

iii. Satisfactory participation on a WEAT project. The employment counselor may establish with the client the hours of participation for each performance period.

iv. Participation in job search and job search training.

v. Enrollment and participation in self-sufficiency groups, adult education, skill training programs, or appropriate workshops.

vi. Registration for employment with the department. The registration must remain current and continuous.

vii. Other activities leading towards increased income as agreed upon in the employment plan.

b. An individual may not refuse a bona fide offer of employment without good cause.

c. If a recipient is required, but fails, to meet one or more of the above rehabilitation or employment standards without good cause, the GA financial case is closed at the end of the current month. Verified illness, incapacity, lack of transportation, arrest, or extenuating circumstances as approved by the employment counselor may be good cause for not meeting an employment or rehabilitation requirement. The financial case remains closed until the client participates in the required employment activity and demonstrates that he or she continue satisfactory participation.

d. The consequences for non-participation are as follows:

i. First Occurrence - financial case closes with 10 day notice and cannot be reopened until the individual demonstrates a willingness to participate. Reopen case back to the date of participation as negotiated with Employment Counselor.

ii. Second Occurrence - financial case closes with 10 day notice and will remain closed for 30 days and until participation has been demonstrated.

iii. Third Occurrence - case must be staffed with supervisor or designee and if non-participation is verified after staffing, financial case closes with 10 day notice and remains closed for 6 months.

12. The employment counselor may provide help to clients for up to six months after termination. The services may include help in getting needed services, job placement services, counseling, GASSP medical services and GASSP Z fund assistance.

13. Residents of Institutions, group homes, and alcoholism and drug treatment centers are not eligible if the facility receives funding for residential treatment under government contract or if the facility is administered by a government unit or is administered under contract with a government unit.

**R986-218-820. Income Standards, Eligibility and Grant Determination.**

1. TANF rules apply unless a different rule is stated below. Financial responsibility is limited to spouse for spouse. The income and assets of people with financial responsibility for a GA client is counted in determining eligibility and grant amount if they are living with the client.

2. The only people included in the grant are those who:
a. Live together, and
b. Have financial responsibility for one another.
3. The SSI income of financially responsible household members is counted. A person receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, pursuant to 20 CFR Part 416.1321 through 416.1330.
4. The only earned income disregard are
a. The first $100 of earnings and 50% of the remaining earned income
b. Participants who have received a GASSP financial payment in one of the past four months will also have the $100 and 50% disregard subtracted from their earnings for the Net Needs Test calculations.
c. The $100 and 50% earned income disregard is applied to each individuals' earnings and is not time limited.
5. The household is eligible if the available income is less than the standard grant. The minimum grant shall not be less than one dollar.

**R986-218-830. Assets.**
1. The value of countable real and personal assets cannot exceed $2000. The size of the household does not change the amount of this asset limitation.
2. Do not count the equity value up to $8000 per household of one car or other motor vehicle. If the one car the household applies this exclusion to is equipped to transport a disabled household member, the entire equity value is excluded. Count the equity value of any additional cars. TANF rules in R986-213-304 apply unless otherwise listed.

**R986-218-840. GA Medical Benefit.**
A person eligible for GA financial assistance is eligible for medical assistance without completing a separate application.

**R986-218-850. Reviews.**
If the recipient is actively involved in following through on self-sufficiency activities, a review every 12 months may be required. Otherwise, a review of the case takes place at least every six months. Each individual must have developed a self-sufficiency plan and be following through on that plan unless exempted. If exempted, a review is completed to see if the reason for the exemption still applies. Also, a review for SSI eligibility is completed.

**R986-218-860. Special General Assistance Program For Transient Persons.**
1. Transient persons are non-residents of Utah who are temporarily stranded and do not intend to stay in Utah.
2. The regional department director or designee may approve assistance to cover the emergency need under the GA category.

**KEY: public assistance programs, resources***
**October 22, 1999 35A-3-103**
**Notice of Continuation February 10, 1997 35A-3-401**