

R17. Administrative Services, Archives and Records Service.**R17-7. Archival Records Care and Access at the State Archives.****R17-7-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the care and access of records in the custody of the State Archives, including classification or reclassification.

R17-7-2. Custody of Records, Care and Access.

(1) The State Archives accepts records which are placed in the official custody of the State Archivist in accordance with Sections 63G-2-604, 63A-12-102, 63A-12-103, and 63A-12-105.

(2) Records in the State Archives are available for public use in the State Archives insofar as use of the records is not restricted by law.

(3) Except as otherwise provided by law, records may not be removed or loaned for research use outside the State Archives.

R17-7-3. Access to Records.

(1) Records are made available for public use in the State Archives Research Center. Patrons must observe Research Center procedures for the protection and control of the records.

(2) Patrons are required to register to use the Research Center and Research Center staff may require patrons to provide photographic identification.

(3) Patrons shall only use a pencil when making personal notes, shall not mark public records, and shall maintain the original order of the public records consulted.

(4) Persons may not smoke, drink, or eat in the Research Center.

(5) Patrons may take only paper and research materials into the Research Center. Patrons must check brief cases, purses, backpacks, or similar items at the desk before entering the research area.

(6) Patrons shall use care in handling fragile materials. Patrons shall not alter, mutilate, or otherwise deface public records.

(7) Patrons may not remove government records from the Research Center.

(8) Patrons may only use equipment and resources in the Research Center for the purposes of research associated with the Utah State Archives or Utah State History.

R17-7-4. Enforcement.

(1) If a patron violates R17-7-3, Research Center staff may issue a verbal warning.

(2) If, after unheeded warning, or if there is risk of immediate or severe damage to records, staff may request the patron to leave immediately.

(3) If a patron fails to promptly comply with staff request to leave, staff may request assistance from building security personnel and from city police.

(4) These enforcement subsections do not limit Archives from performing its duties and enforcing these rules as otherwise allowed by law.

R17-7-5. Classification.

(1) Upon receiving a request to classify or reclassify a record or information within a record that is in the official custody of State Archives, State Archives may provide notice to any existing governmental entity that has classified the record series or record.

(2) No later than three days after the date of the notice, the governmental entity may notify State Archives of any decision regarding the classification of the record or information within

the record.

(3) If the governmental agency fails to notify State Archives of any decision, then State Archives must classify or reclassify the record or information within the record as required by law or may classify or reclassify the record or information as allowed by law.

KEY: records retention, public information, access to information
May 17, 2010

63A-12-104

R35. Administrative Services, Records Committee.**R35-1. State Records Committee Appeal Hearing Procedures.****R35-1-1. Scheduling Committee Meetings.**

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting on the Public Meeting Notice Web site.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from

which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more members of the Committee or a party may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Chair.

(13)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date. Failure to comply with this provision may result in a Committee order requiring that the petitioner pay the governmental entity's reasonable costs and expenses. The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request; (ii) the timeliness of the request; (iii) whether petitioner has previously requested and received a postponement; (iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within five business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 63A-12-101 et seq.

(3) All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within 3 business days. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by

the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings will be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but waiting official approval, they are a public record and must be marked as "Draft".

(d) At the next meeting, at the direction of the chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes will be then marked as "Approved".

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

KEY: government documents, state records committee, records appeal hearings

May 17, 2010

63G-2-502(2)(a)

Notice of Continuation September 23, 2009

R37. Administrative Services, Risk Management.**R37-1. Risk Management General Rules.****R37-1-1. Purpose.**

The purpose of this rule is to establish the liability and property insurance coverage provided by the Risk Management Fund, and the conditions, underwriting standards, and other rules that govern or control the use of this coverage.

R37-1-2. Authority.

This rule is established pursuant to Section 63A-4-101 which authorizes the State's Risk Manager to recommend rules to the Director of the Department of Administrative Services who is authorized to enact rules.

R37-1-3. Definitions.

(1) "Conditions" specific policy requirements the violation of which will invalidate coverage.

(2) "Coverage or coverage provision" means the type of protection provided against specific risks or losses.

(3) "Covered Entity" means a state department or other state agency not within a state department, a state college or university, a public school district, a participating charter school, or other entity which is covered under the terms of a coverage document issued to it by the Risk Management Fund.

(4) "Underwriting Standard" or "Risk Control Standard" means an action or procedure which must be performed by a covered entity in order to reduce the risk of loss or to avoid imposition of coverage restrictions, deductibles, increased premiums, or loss of credits or dividends.

R37-1-4. Description of the Fund and its Activities.

The Risk Management Fund, hereafter referred to as the Fund, is a self-insurance mechanism established by statute to handle losses to or claims against the state, its agencies, institutions of higher education, participating school districts, participating charter schools, and other entities, which are treated as state agencies when participating, all hereafter referred to as covered entities. Although coverage through the Fund may be in formats like or similar to insurance policies, the relationship between the Fund and covered entities is not that of insurer and insured. No special duties, rules of construction or other legal doctrines recognized by the courts or created by statute with respect to the relationship of an insurer to its insured shall apply to the Fund or entities covered by it, except those which are specifically required by Title 31A, Chapter 12 with respect to some coverage provided to school districts. The duty to defend employees, as defined in Section 63-30d-102 UCA, or volunteers, as defined in Section 67-20-2 UCA, of covered entities extends only as far as the entities' duty to employees or volunteers under the "Governmental Immunity Act" and no special relationship of insurer to insured exists between the Fund and employees or volunteers of covered entities.

R37-1-5. Coverage, Deductibles, Duties and Conditions.

Specific risks covered, properties covered, coverage limits, exclusions, deductibles, conditions and other coverage provisions for coverage through the Risk Management Fund shall apply in accordance with coverage policies issued by the Fund to each covered entity. Subject to specific provisions of the coverage policies, the Fund provides the following coverage:

(1) Liability

(a) Risks Covered - General, automobile, personal injury, errors and omissions, malpractice and garage keepers' liability, and personal injury protection coverage applying to all premises, operations, approved contracts, products and completed operations; owned, non-owned and hired automobiles, other than personal use automobiles; employees, volunteers, and students in the scope of employment or approved services to the public.

(b) Limits - Typically, the limits are the maximum liability calculated pursuant to Section 63G-7-604 UCA; lower or higher limits for other situations as indicated in coverage policies issued to each covered entity.

(c) Deductible - Deductibles apply to some specific property coverages and situations as noted in the coverage document, but there is no general deductible with regard to liability coverage.

(d) Conditions - The following conditions apply to liability coverages:

(i) In the event of an occurrence, personal injury, act, error, omission, incident, or any other situation likely to give rise to a claim covered by the Fund, written notice containing particulars sufficient to identify the covered entity or person and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the potential claimant, and of available witnesses, shall be given by or for the covered entity or person to the Fund or any of its authorized agents as soon as practicable. The covered entity shall promptly take all reasonable steps to prevent additional injury or damage arising out of the same or similar conditions. A covered entity's failure to take preventive measures shall not constitute a breach of this condition unless the Fund has requested the covered entity, in writing, to undertake the preventive measures. Costs incurred by a covered entity to implement preventive measures shall not be recoverable from the Fund.

(ii) If claim is made or suit is brought against the covered entity or person, whether in court or through an administrative proceeding with the Utah Anti-discrimination Division, the Federal Equal Employment Opportunity Commission or similar body, the covered entity or person shall immediately forward to the Fund a copy of every demand, notice, summons or other process received by it or its representative. Any covered person who is an employee or volunteer of the covered entity shall comply with all provisions of Sections 63G-7-902 UCA, 63G-7-903 UCA, or both before the Fund shall have any duty to defend or pay any judgment against such covered person.

(iii) The covered entity or person shall cooperate with the Fund and, upon the Fund's request, provide the fund with requested information, assist in making settlements, assist in making rule 68 offers of judgment, and assist in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity or person because of bodily injury or property damage with respect to which coverage is afforded by the Fund; and the covered entity or person shall attend hearings and trials and assist in securing and providing evidence and obtaining the attendance of witnesses. The covered entity or person shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for qualified first aid to others at the time of the accident.

(iv) In the event any employee or volunteer requests under the terms of Section 63G-7-902 UCA that the covered entity defend him relative to any action or claim which would be covered by the Fund, the covered entity shall immediately forward the request to the Fund and the Fund shall have the right to determine on behalf of the covered entity whether to defend, defend under a reservation of rights, or decline to defend.

(v) The covered entity or person shall share with the Fund all records requested by the Fund, relative to any claim under this coverage, to the fullest extent permitted by the Utah Government Records Access and Management Act (GRAMA). If the covered entity falls under the provisions of Section 63-2-701, 702 or 703 UCA, the covered entity shall adopt an ordinance or policy, or make rules which allow the sharing of records with the Fund to at least the extent permitted by GRAMA and shall share with the Fund all records requested

relative to any claim under this coverage to the fullest extent permitted by the ordinance, policy or rule.

(vi) This coverage does not apply to any claim under the Americans With Disabilities Act, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, or similar laws based in whole or in part on the failure of any covered entity to provide a reasonable accommodation unless the covered entity has notified the Fund of its preliminary intention not to provide the requested accommodation, has allowed the Fund a reasonable opportunity to consult with the covered entity before the covered entity denies the requested accommodation, and the Fund agrees with the proposed denial.

(2) Conditions applicable to all coverages provided by the Fund:

(a) In accordance with Subsection 63A-4-101(2)(b)(v) UCA, in the event of any coverage dispute between the Fund and any covered entity or person, there shall be no right of legal action against the Fund.

(b) In the event of any payment under any coverage provided through the Fund, the Fund shall be subrogated to all of the covered entity or person's rights of recovery therefor against any person or organization and the covered entity or person shall execute and deliver instruments and papers and do whatever else is necessary to secure these rights. The covered entity or person shall do nothing after the loss to prejudice these rights.

R37-1-6. Premium Establishment.

In addition to other actuarially sound factors, the Risk Manager may use the following in determining the appropriate premiums for coverage provided to each covered entity:

(1) Entity efforts at exposure management including completion of self-inspection surveys, employee training, agency attendance at Fund-sponsored seminars, agency risk control meetings, risk-related policy development and implementation, etc.

(2) Entity accidents, claims and loss history.

(3) Recent state and federal statutes or court decisions affecting covered entities and operations.

(4) Number of employees in the entity and size of the entity's budget.

(5) Value, protection and other characteristics of the entity's buildings and contents.

(6) Number, type, and value of entity vehicles.

(7) Entity operations and activities.

(8) Actuarial studies.

R37-1-7. Risk Control Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), each covered entity shall comply with the following risk control standards:

(1) Covered entities shall appoint an entity risk coordinator who shall report directly to the covered entity's director, school superintendent or university/college president, or to another individual who reports directly to the covered entity's director, school superintendent or college/university president. Subordinate risk coordinators or other individuals may be appointed at the division, school or lower levels of the organization as the entity deems appropriate. The day to day implementation or management of the entity's risk management duties may be assigned by the risk coordinator to subordinate individuals, committees, or groups as necessary for efficient operation and implementation.

(2) The covered entity risk coordinator shall be responsible for the following duties:

(a) Identifying, evaluating and resolving risk exposures for the entity,

(b) Coordinating with the Fund on the reporting and investigation of all claims or losses,

(c) Coordinating with the Fund on all liability prevention and loss control and prevention activities.

(d) Ensuring that the Fund is provided with all reasonable information necessary to compute premiums.

(e) Ensuring that premium billings are processed and paid.

(f) Ensuring that notification is made to the Fund on all incidents, issues or informal or administrative claims, including claims originating at the EEOC and/or UALD that may result in a formal claim against the Fund.

(g) Internally supervising or managing all loss prevention activities.

(h) Normally chairing the entity Risk Control Committee and ensuring staff support to the Risk Control Committee.

(3) Each covered entity shall appoint a Risk Control Committee, hereinafter referred to as the committee. Each covered entity shall include on its committee those positions deemed necessary by the Risk Coordinator and/or the entity director, president, or superintendent to provide comprehensive review and risk management services to all of the entities operations. It is recommended that the following positions be included on the committee:

(a) Entity Risk Coordinator.

(b) The covered entity's maintenance director and/or facilities director, where the entity owns or manages its own buildings or in the case where the building is leased the DFCM manager assigned to that building.

(c) The covered entity's Human Resource/Personnel director.

(d) The covered entity's Americans with Disabilities Act Coordinator, or other entity Civil Rights coordinator or director.

(e) The covered entity's Safety Director.

(f) The covered entity's legal counsel or attorney as an ex-officio member.

(g) Staff from the Fund, who may attend the meetings in an ex officio capacity.

The covered entity may appoint on either a permanent or ad hoc basis other individuals whose job duties or special expertise may be of use to the committee. These individuals may include the covered entity's internal auditor, the covered entity's security director, the transportation or motor pool director, a representative from the entity's finance and accounting section and employee representatives. School districts may also wish to include on the committee representatives from the district's athletic, vocational, science and other high risk curriculum areas. The Fund, upon request of the covered entity risk coordinator, will provide recommendations on the makeup of the committee.

The committee shall be normally chaired by the covered entity's risk coordinator. The committee shall be responsible for oversight and supervision of the entity's risk coordination and management program and shall meet at least once each quarter. In advance of the meeting, the committee shall publish an agenda of its meetings and shall forward a copy of the agenda to the Fund. The entity or its committee may appoint other ad hoc or standing committees, or subcommittees to deal with specific issues and problems such as safety, risk control training, civil rights, accident review etc.

(4) The duties of the committee shall include the following activities:

(a) Identifying, evaluating and resolving entity risk exposures.

(b) Reviewing the hazards and corrective actions identified during the annual Risk Management self-inspection survey and developing effective and timely plans to eliminate those hazards.

(c) Serving as a liaison between the Fund and the entity at the discretion of the Risk Coordinator.

(d) Reviewing inspection and other reports from the Fund and where applicable, implementing the proposed

recommendations.

(e) Reviewing and analyzing investigation reports and recommendations regarding all claims, accidents, workers injuries or near accidents, and making recommendations to entity management at appropriate levels on methods for reducing accidents or claims.

(i) Where appropriate, the committee may recommend disciplinary and/or corrective action for employees who violate safety standards including but not limited to OSHA, health, hazardous materials, fire and entity specific standards and/or other standards, policies or rules that result in claims, accidents, worker injuries or near accidents. Any disciplinary or corrective action imposed shall be taken in accordance with the entity's rules.

(ii) The committee, acting as the agency's Accident Review committee, shall review reports and recommendations from subcommittees and others regarding the driving and accident records of employees and may restrict employees from using entity vehicles or the employee's own vehicle on entity business.

(f) Developing policies related to risk reduction and accident prevention and shall recommend their adoption by entity management.

(g) Conducting appropriate evaluations or audits of entity operations and developing findings and recommendations for resolution of identified problems or risk exposures.

(h) Conducting an annual review or evaluation of the entity's risk reduction efforts and providing the Fund with a copy of this evaluation.

(i) Performing other related duties as assigned by the entity risk coordinator, by entity management, or as requested by the Fund.

R37-1-8. Underwriting Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), covered entities shall comply with the following underwriting standards.

(1) Covered entities shall annually review, update, and submit a Statement of Values to the Fund before July 1st. Furthermore, within 90 days of acquisition, covered entities shall report to the Fund the description and value of any after-acquired personal property in excess of \$20,000 and real property in excess of \$250,000. If a covered entity fails to comply with this standard, the Fund may deny coverage with respect to any loss associated with a non-reported asset.

(2) Covered entities shall accurately complete and annually submit the Risk Management Online Self-Inspection Survey before June 1st, unless special exemption has been granted by the State Risk Manager.

(3) Covered entities shall provide all volunteers and employees with training approved by the Fund on unlawful discrimination and harassment in the workplace and other civil rights and liability issues as required by the Fund. After initial training all covered entities shall provide updated or refresher training to all staff members every two (2) years. For state entities the Fund shall coordinate the required training with the Department of Human Resource Management as appropriate. This training shall be developed and provided by qualified individuals. Covered entities shall keep records of the training, including who provided the training, who attended the training and when they attended it.

(4) Covered entities shall conduct or shall have conducted for them driver's license verification checks on all new employees and volunteers who operate entity vehicles or their own vehicles on entity business at time of employment. Covered entities shall, at least annually, verify the status of the driver's license of all employees and volunteers who operate entity vehicles or their own vehicles on entity business.

(5) Covered entities shall establish procedures to ensure that any employee or volunteer who does not have a valid

driver's license is not allowed to operate an entity vehicle or his own vehicle on entity business.

(6) Covered entities shall develop procedures to ensure that records of driver's license checks and the results of these checks shall be kept confidential.

(7) Covered entities shall include in all written job descriptions or other job analysis documents or individual performance plans where use of a vehicle is an essential function of the job, a requirement for maintenance of a valid and appropriate driver's license.

(8) Covered entities shall require and document that all employees and volunteers who operate entity vehicles, or their own vehicles on entity business, complete a Fund-approved or Fund-provided driver safety program at the time of initial employment and at least once every two years.

(9) Covered entities shall develop and enforce policies and procedures to deal with problem drivers and other hazardous driving situations. In addition to other appropriate provisions, these policies shall contain the following:

(a) Employees or volunteers who are involved in an at-fault accident, shall not be allowed to operate entity vehicles, or their own vehicles on entity business, beyond a reasonable time, not to exceed thirty days. During this time the employee or volunteer must complete the Fund approved driver safety program in order to maintain driving privilege. This training shall not take the place of any agency imposed discipline or corrective action.

(b) Employees and volunteers who are required to operate entity vehicles or their own vehicles while on entity business shall operate the vehicles within the limits or restrictions of their individual licenses.

(c) Employees and volunteers who are convicted of Driving under the Influence of Alcohol or Drugs, or Reckless Driving, shall not be allowed to operate entity vehicles or their own vehicles on entity business, until their driving privileges are legally restored.

(10) Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure that these procedures are in accordance with the requirements of the "Americans With Disabilities Act", as amended, and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

(11) Covered entities shall review the performance standards or evaluation plan of each employee and where appropriate add a standard requiring the use of required safety equipment, adherence to safety standards, or other liability and risk reduction requirements appropriate to the position and duties performed by the employee.

(12) All new construction, remodels, additions to existing facilities shall comply with the adopted editions of the International Building Code, International Fire Code, and other applicable codes. Existing facilities known to be out of compliance with the adopted edition of the International Building Code, International Fire Code and all other applicable codes at the time of construction, shall be brought up to compliance as a condition of insurability, otherwise an appropriate premium surcharge or coverage restriction may be instituted upon reasonable notice and opportunity to correct areas of noncompliance.

KEY: risk management

June 1, 2010

Notice of Continuation June 8, 2007

63A-4-101 et seq.

R37. Administrative Services, Risk Management.**R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.****R37-4-1. Authority and Calculation Process.**

Pursuant to UCA 63G-7-604(4) (formerly 63-30d-604(4)(b)) the Risk Manager hereby establishes a new limitation of judgment.

Accordingly, the Risk Manager has calculated the consumer price index (CPI) for calendar years 2007 and 2009 using the standards provided in Sections 1(f)(4) and 1 (f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all-urban consumers published by the Department of Labor. By applying these standards, the consumer price index for the calendar year 2007 is calculated to be 204.87 and the index for 2009 is 214.00. The percentage difference between the 2007 index and the 2009 index was then computed to be 4.5%.

R37-4-2. New Limitation of Judgment Amounts.

As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63G-7-604(1) has been increased as follows, and is effective July 1, 2010 for claims occurring on or after that date:

- 1) The limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify, is \$648,700 for one person in any one occurrence, and \$2,221,700 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and
- 2) The limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is \$259,500 in any one occurrence.

R37-4-3. Limitations of Judgments by Calendar Date.

The limitation on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

- 1) Incident(s) occurring before July 1, 2001 - \$250,000 for one person in an occurrence, \$500,000 aggregate for two or more persons in an occurrence; and \$100,000 for property damage for any one occurrence as explained in R37-4-2(2).
- 2) Incident(s) occurring on or after July 1, 2001 - \$500,000 for one person in an occurrence, \$1,000,000 aggregate for two or more persons in an occurrence; and \$200,000 for property damage for any one occurrence as explained in R37-4-2(2).
- 3) Incident(s) occurring on or after July 1, 2002 - \$532,500 for one person in an occurrence, \$1,065,000 aggregate for two or more persons in an occurrence; and \$213,000 for property damage for any one occurrence as explained in R37-4-2(2).
- 4) Incident(s) occurring on or after July 1, 2004 - \$553,500 for one person in an occurrence, \$1,107,000 aggregate for two or more persons in an occurrence, and \$221,400 for property damage for any one occurrence as explained in R37-4-2(2).
- 5) Incident(s) occurring on or after July 1, 2006 - \$583,900 for one person in an occurrence, \$1,167,900 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).
- 6) Incident(s) occurring on or after July 1, 2007 - \$583,900 for one person in an occurrence, \$2,000,000 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).
- 7) Incident(s) occurring on or after July 1, 2008 - \$620,700 for one person in an occurrence, \$2,126,000 aggregate for two or more persons in an occurrence, and \$248,300 for property

damage for any one occurrence as explained in R37-4-2(2).

8) Incident(s) occurring on or after July 1, 2010 - \$648,700 for one person in an occurrence, \$2,221,700 aggregate for two or more persons in an occurrence, and \$259,500 for property damage for any one occurrence as explained in R37-4-2(2).

KEY: limitation on judgments, risk management, governmental immunity act caps
June 1, 2010 **63G-7-604(4)**
Notice of Continuation October 9, 2007

R68. Agriculture and Food, Plant Industry.**R68-12. Quarantine Pertaining to Mint Wilt.****R68-12-1. Authority.**

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

B. It has been determined that the disease known as Mint Wilt caused by the organism *Verticillium Albo-atrum* R and B or *Verticillium dahliae* is injurious to peppermint and spearmint, resulting in drastically lowered oil production in areas of severe infection; and

C. restricting the movement of rootstocks in other states has been effective in retarding the spread of the disease to new areas of production, and in making growers aware of the necessity of better sanitary and cultural practices; and

D. the strain of *Verticillium* wilt known to infect mint is not known to be present in the State of Utah;

E. The Commissioner of Agriculture and Food of the State of Utah, by virtue of the authority vested in him by the provisions of 4-2-2 establishes a quarantine in order to prevent the introduction and subsequent spread of the *Verticillium* wilt disease of mint into and within the State of Utah, setting forth:

1. quarantined areas;
2. restricted areas;
3. regulated articles;
4. conditions governing movement, and
5. required in-state certification of mint.

R68-12-2. Definitions.

For the purpose of this quarantine, the following terms are defined:

A. "Department" means the Utah Department of Agriculture and Food.

B. "Disease organism" means *Verticillium Albo-atrum* R and B or *Verticillium dahliae* varieties capable of causing wilt of mint.

C. "Mint" means any plant or part thereof of the genus *Mentha*.

D. "Mint planting stock" includes any portion of the mint used for reproduction and/or propagation.

E. "Certified mint planting stock" means mint planting stock carrying a sealed certification tag or a certificate provided by the official certification agency of the state of origin.

R68-12-3. Quarantined Areas.

All areas outside the State of Utah.

R68-12-4. Restricted Areas.

All areas within the State of Utah.

R68-12-5. Regulated Articles.

All mint planting stock.

R68-12-6. Prohibited Articles.

All mint planting stocks which are not certified by the official certification agency of the state of origin.

R68-12-7. Conditions Governing Movement.

A. Entry into State. No person shall import or move in any manner into the State of Utah any mint unless it carries a sealed certification tag or a certificate issued by the official agency of the state of origin. Any imported mint not meeting this requirement shall be returned to the point of origin or destroyed at the option and expense of the importer.

B. Movement within State. No mint planting stock shall be moved within the State of Utah unless it carries a sealed certification tag or a certificate issued by the official certification agency of the state of Utah.

R68-12-8. Certification Required Within State.

All mint planting stock imported into the State of Utah

shall be placed under the certification program of the Utah Crop Improvement Association and shall comply with the certification requirements and standards as established by that agency. All mint plantings in Utah must be maintained under certification or destroyed. If the Department finds any mint within the State of Utah infested with the wilt disease organism, it shall require the destruction of the same.

R68-12-9. Waiver of Liability.

Any shipment of mint planting stock found within the State of Utah in violation of this quarantine must, under the immediate supervision of the State Department of Agriculture and Food, be destroyed or returned to the shipper at once. In either case, the shipper shall stand the expense of disposition of such shipment and the State of Utah assumes no liability for costs associated therewith. Any violation of these orders will be dealt with according to law.

KEY: plant diseases

1987

Notice of Continuation May 27, 2010

4-2-2

R81. Alcoholic Beverage Control, Administration.**R81-7. Single Event Permits.****R81-7-1. Application Guidelines.**

(1) A single event permit application for the purpose of conducting a convention, civic or community enterprise, shall be included in the agenda of the monthly commission meeting for consideration for issuance of a single event permit, when the requirements of Section 32A-7 have been met, and a completed application has been received by the department. "Conducting" as used herein means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.

(2) Pursuant to Section 32A-7-101, the commission may grant single event permits to a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association, and to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.

(3) If the applicant is a bona fide incorporated association, corporation, or a separately incorporated subordinate lodge, chapter or local unit thereof, the applicant shall submit a copy of its certificate and articles of incorporation from the state, which reflect that the applicant has been in existence for at least one year prior to date of application.

(4) If the applicant is a bona fide limited liability company, the applicant shall submit a copy of its limited liability company certificate of existence from the state, which reflects that the applicant has been in existence for at least one year prior to date of application.

(5) If the applicant is a bona fide church, political organization, or recognized subordinate chapter or local unit thereof, the applicant shall submit proof of its tax exempt status as provided by the Internal Revenue Service.

(6) Any subordinate or local entity of a parent entity must also establish that it is duly "recognized" by the parent entity by providing written verification of its "recognized" status such as a letter from, or bylaws of the parent entity. The subordinate or local unit shall also furnish proof that the parent entity qualifies under sections (1), (2), (3), (4), and (5) of this rule. These requirements shall not apply in situations where the subordinate or local unit is separately incorporated.

(7) Single event permits are issued to state agencies, political subdivisions of the state, and organizations listed in Subsection (2) that are conducting a convention, civic or community enterprise. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

To ensure compliance with this Subsection (7), the commission may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) the type of entertainment, if any, at the event;
- (d) the location of the event;
- (e) the frequency of events held at the same location;
- (f) whether the location is government owned and operated; and
- (g) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.

(8) Calendar year is defined as January 1 through December 31.

(9) The single event permit bond, as required by Section 32A-7-105, shall not be released back to the single event

permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(10) If an organization or individual other than the one applying for the single event permit posts the \$1,000 bond required by Section 32A-7-105, an affidavit must be submitted attesting that the \$1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(11) The commission may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32A-7. The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-7-2. Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of alcohol at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a single event permit for such events, the commission must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the commission will issue a single event permit for an outdoor or a large-scale public event. However, this rule gives the commission discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32A-1-107 and 32A-7-101 and -104.

(4) Policy.

(a) Before a single event permit will be issued by the commission to allow the sale of alcoholic beverages at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

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

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 62A-15-401.

(D) The use of hand stamps or issuance of wristbands does

not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

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

(iv) No more than two alcoholic beverages shall be sold to a customer at a time.

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

(vi) If minors may attend the event, all dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the commission, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, may in its discretion relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the commission may in its discretion require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:

(i) Placing limits on the variety of alcoholic beverages served at the event.

(ii) Requiring that alcoholic beverages be distinguishable in appearance from non-alcoholic beverages.

(iii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for single event permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.

(b) Department staff shall provide this information to the commissioners prior to the commission's consideration of the single event permit application.

(c) The commission shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the single event permit.

R81-7-3. Price Lists.

(1) A single event permittee shall have a printed alcoholic beverage price list available for inspection containing prices of mixed drinks, wine, beer, and heavy beer. The list shall include any charges for the service of packaged wines or heavy beer, and any service charges for the supply of glasses, chilling, or wine service.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages

May 26, 2010

Notice of Continuation August 24, 2006

32A-1-107

R81. Alcoholic Beverage Control, Administration.**R81-10B. Temporary Special Event Beer Permits.****R81-10B-1. Application Guidelines.**

(1) A temporary special event beer permit application shall be included in the agenda of the monthly commission meeting for consideration for issuance of the permit, when the requirements of 32A-10-302, -303, and -305 have been met, and a completed application has been received by the department.

(2) The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. "Calendar year" means January 1 through December 31.

(3) Pursuant to 32A-10-301, a temporary special event beer permit may be issued to a person for the sale of beer for on-premise consumption at a temporary special event that does not last longer than 30 days. The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. However, temporary special event beer permit may not be issued or obtained for the purpose of avoiding or attempting to avoid the requirement of obtaining a state on-premise beer license under 32A-10-201. To ensure compliance with this Subsection (3), the commission may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) whether the event is a convention, community or civic enterprise;
- (d) the type of entertainment, if any, at the event;
- (e) the location of the event;
- (f) the frequency of events held at the same location;
- (g) whether the location is government owned and operated; and
- (h) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.

(4)(a) The temporary special event beer permit bond, as required by Section 32A-10-305, shall not be released back to the permittee sooner than 30 days following the event.

(b) If an organization or individual other than the one applying for the permit posts the bond, an affidavit must be submitted attesting that the bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the event, the bond may be forfeited.

(5) The commission may authorize multiple sales outlets on different properties under one temporary special event beer permit, provided that each site conforms to location requirements of Section 32A-10-301. The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-10B-2. Guidelines for Issuing Permits for Outdoor or Large -Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a temporary special event beer permit for such events, the commission must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished beer or adults being over-served beer at the event. This rule identifies control measures that must be in place before the commission will issue a temporary special event beer permit for an outdoor or a large-scale public event. However, this rule gives the commission discretion not to require specific control measures under certain circumstances after considering

the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32A-1-107 and 32A-10-301 and -304.

(4) Policy.

(a) Before a temporary special event beer permit will be issued by the commission to allow the sale of beer at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase beer must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the beer sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 63A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing beer from asking for proof of age if they suspect a person attempting to purchase beer is under the age of 21 years.

(ii) Beer sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of beer at the event is limited to a confined, restricted area such as a "beer garden", then beer, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Beer shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two beers shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where beer is sold and dispensed to supervise the sale and dispensing of beer.

(vi) If minors may attend the event, all dispensing and consumption of beer shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where beer consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the commission, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, may in its discretion relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the commission may in its discretion require additional control measures as a condition of issuing a temporary special event beer permit. These can include but are not limited to the following:

(i) Requiring that beer products be distinguishable in appearance from non-alcoholic beverages.

(ii) Requiring a certain minimum number of law

enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for temporary special event beer permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished beer and adults being over-served beer at the event.

(b) Department staff shall provide this information to the commissioners prior to the commission's consideration of the permit application.

(c) The commission shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the permit.

R81-10B-3. Price Lists.

(1) A temporary special event beer event permittee shall have a printed price list or menu available for inspection containing beer prices.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages

May 26, 2010

Notice of Continuation July 31, 2008

32A-1-107

32A-10

R162. Commerce, Real Estate.

R162-2. Exam and License Application Requirements.

R162-2-1. Qualifications for Licensure and Exam Application.

2.1.1 Minimum Age. All applicants shall be at least 18 years of age.

2.1.2 Formal Education Minimum. All applicants shall have at least a high school diploma, G.E.D., or equivalent as determined by the Commission.

2.1.3 Prelicensing Education. All applicants shall have completed any required prelicensing education before applying to sit for a licensing examination.

2.1.4 Exam application. All applicants who desire to sit for a licensing examination shall deliver an application to sit for the examination, together with the applicable examination fee, to the testing service designated by the Division. If the applicant fails to take the examination when scheduled, the fee shall be forfeited.

2.1.4.1. Applicants previously licensed out-of-state.

(a) If an applicant is now and has been actively licensed for the preceding two years in another state which has substantially equivalent licensing requirements and is either a new resident or a non-resident of this state, the Division shall waive the national portion of the exam.

(b) If an applicant has been on an inactive status for any portion of the past two years the applicant may be required to take both the national and Utah state portions of the exam.

R162-2-2. Licensing Procedure.

2.2. Within 90 days after successful completion of the exam, the applicant shall return to the Division each of the following:

2.2.1. A report of the examination indicating that both portions of the exam have been passed within a six-month period of time.

2.2.2. The license application form required by the Division. The application form shall include the licensee's business and home address. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

2.2.3. The non-refundable fees which include the appropriate license fee as authorized by Section 61-2-9(5) and the Recovery Fund fee as authorized by Section 61-2a-4.

2.2.4. Documentation indicating successful completion of the required education taken within the year prior to licensing. If the applicant has been previously licensed in another state which has substantially equivalent licensing requirements, the applicant may apply to the Division for a waiver of all or part of the educational requirement.

(a) Until December 31, 2009, a candidate for the license of sales agent shall successfully complete 90 classroom hours of approved study in principles and practices of real estate.

(b)(i) Beginning January 1, 2010, a candidate for the license of sales agent shall successfully complete 120 hours of approved study in principles and practices of real estate.

(ii) An applicant for licensure may complete 90 hours of prelicense education only if:

(A) the applicant began the prelicense education program prior to January 1, 2010; and

(B) the applicant submits the completed education prior to March 31, 2010.

(c) Experience shall not satisfy the education requirement. Membership in the Utah State Bar shall waive this requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate

education was taken within 12 months prior to application.

(d) Candidates for the license of associate broker or principal broker shall successfully complete 120 classroom hours of study curriculum approved by the Commission consisting of 45 hours of broker principles, 45 hours of broker practices, and 30 hours of Utah law and testing. Experience shall not satisfy the education requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application.

2.2.5. The principal broker and associate broker applicant shall submit the forms required by the Division documenting a minimum of three years licensed real estate experience and a total of at least 60 points accumulated within the five years prior to licensing. A minimum of two years (24 months) and at least 45 points shall be accumulated from Tables I and/or II. The remaining 15 points may be accumulated from Tables I, II or III.

TABLE I - REAL ESTATE TRANSACTIONS

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:	
(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE II - PROPERTY MANAGEMENT

RESIDENTIAL	
(a) Each unit managed	.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

2.2.6. The Principal Broker may accumulate additional experience points by having participated in real estate related activities such as the following:

TABLE III - OPTIONAL

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

2.2.7. If the review of an application has been performed by the Division and the Division has denied the application based on insufficient experience, and if the applicant believes that the Experience Points Tables do not adequately reflect the amount of the applicant's experience, the applicant may petition the Real Estate Commission for reevaluation by making a written request within 30 days after the denial stating specific grounds upon which relief is requested. The Commission shall thereafter consider the request and issue a written decision.

2.2.8. An applicant previously licensed in another state

shall provide a written record of the applicant's license history from that state and documentation of disciplinary action, if any, against the applicant's license.

2.2.9. Qualifications of License Applicants. An applicant for a new license may not:

(a) have been convicted of, entered a plea in abeyance to, or completed a sentence of confinement on account of a felony within five years preceding the application; or

(b) have been convicted of or completed any sentence of confinement on account of a misdemeanor involving fraud, misrepresentation, theft, or dishonesty within the three-year period preceding the date of application.

2.2.10 Qualifications for Renewal. An applicant for license renewal, or for reinstatement of an expired license, may not have, since the last date of licensure:

(a) been convicted of a felony;

(b) entered into a plea in abeyance agreement relative to a felony charge involving fraud, misrepresentation, or deceit; or

(c) had, with regard to activities requiring a real estate license, a finding of fraud, misrepresentation or deceit entered against the applicant by a court of competent jurisdiction or a government agency, unless the finding was explicitly considered by the Division in a previous application process.

2.2.11 Determining fitness for licensure. In determining whether an applicant who has not been disqualified by Subsections 2.2.9 or 2.2.10 meets the requirements of honesty, integrity, truthfulness, reputation and competency required for a new or a renewed license, the Commission and the Division will consider information they consider necessary to make this determination, including the following:

2.2.11.1. Whether an applicant has been denied a license to practice real estate, property management, or any regulated profession, business, or vocation, or whether any license has been suspended or revoked or subjected to any other disciplinary sanction by this or another jurisdiction;

2.2.11.2. Whether an applicant has been guilty of conduct or practices which would have been grounds for revocation or suspension of license under Utah law had the applicant then been licensed;

2.2.11.3. Whether a civil judgment has been entered against the applicant based on a real estate transaction, and whether the judgment has been fully satisfied;

2.2.11.4. Whether a civil judgment has been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied.

2.2.11.5 Whether an applicant has ever been convicted of, or entered a plea in abeyance to, any criminal offense, or whether any criminal charges against the applicant have ever been resolved by a diversion agreement or similar disposition;

2.2.11.6. Whether restitution ordered by a court in a criminal case has been fully satisfied;

2.2.11.7. Whether the parole or probation in a criminal case or the probation in a licensing action has been completed and fully served; and

2.2.11.8. Whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a license, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.

R162-2-3. Company Registration.

2.3.1. A Principal Broker shall register with the Division the name under which the principal broker's real estate brokerage or property management company will operate. Registration shall require payment of applicable non-refundable fees and evidence that the name of the new company has been

approved by the Division of Corporations, Department of Commerce.

2.3.1.1. The real estate brokerage shall at all times have affiliated with it a principal broker who shall demonstrate that the principal broker is authorized to use the company name.

2.3.1.2. Misleading or deceptive business names. The Division shall not accept a proposed business name when there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with a licensed real estate brokerage or property management company.

2.3.2. Registration of Entities Operating a Principal Brokerage.

2.3.2.1. A corporation, partnership, Limited Liability Company, association or other entity which operates a principal brokerage shall comply with R162-2.3 and the following conditions:

2.3.2.2. Individuals associated with the entity shall not engage in activity which requires a real estate license unless they are affiliated with the principal broker and licensed with the Division. Upon a change of principal broker, the entity shall be responsible to insure that the outgoing and incoming principal brokers immediately provide to the Division, on forms required by the Division, evidence of the change.

2.3.2.2.1. If the outgoing principal broker is not available to properly execute the form required to effect the change of principal brokers, the change may still be made provided a letter advising of the change is mailed by the entity by certified mail to the last known address of the outgoing principal broker. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form when it is submitted to the Division.

2.3.2.3. If the change of members in a partnership either by the addition or withdrawal of a partner creates a new legal entity, the new entity cannot operate under the authority of the registration of the previous partnership. The dissolution of a corporation, partnership, Limited Liability Company, association or other entity which has been registered terminates the registration. The Division shall be notified of any change in a partnership or dissolution of a corporation which has registered prior to the effective date of the change.

R162-2-4. Licensing of Non-Residents.

2.4. In addition to meeting the requirements of rules 2.1 and 2.2, an applicant living outside of the state of Utah may be issued a license in Utah by successfully completing specific educational hours required by the Division with the concurrence of the Commission, and by passing the real estate licensing examination. The applicant shall also meet each of the following requirements:

2.4.1. If the applicant is an associate broker or sales agent, the principal broker with whom the applicant will be affiliated shall hold an active license in Utah.

2.4.2. If the applicant is a principal broker, the applicant shall establish a real estate trust account in this state. The applicant shall also maintain all office records in this state at a principle business location as outlined in R162-4.1.

2.4.3. The application for licensure in Utah shall be accompanied by an irrevocable written consent allowing service of process on the Commission or the Division.

2.4.4. The applicant shall provide a written record of the applicant's license history, if any, and documentation of disciplinary action, if any, against the applicant's license.

R162-2-5. Reciprocity.

2.5. The Division, with the concurrence of the Commission, may enter into specific reciprocity agreements with other states on the same basis as Utah licensees are granted licenses by those states.

KEY: real estate business
May 25, 2010
Notice of Continuation April 18, 2007

61-2-5.5

R277. Education, Administration.**R277-114. Corrective Action and Withdrawal or Reduction of Program Funds.****R277-114-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Program" for purposes of the rule means a public education project or plan under the direction of the Board, with a specific goal or outcome for which public education funding is provided.
- C. "Recipient" means a school district or school district program, charter school or charter school program, contractor, or any other entity that receives program funding as defined in this rule.
- D. "State Superintendent" means the State Superintendent of Public Instruction as defined under Section 53A-1-301.
- E. "USOE" means the Utah State Office of Education.

R277-114-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of the rule is to provide procedures for public education program monitoring and corrective action for noncompliance with identified program requirements, program accountability standards, and financial propriety.

R277-114-3. USOE Responsibilities.

- A. USOE Directors, coordinators and program specialists shall act as designees of the State Superintendent and shall review compliance with program outcomes and financial propriety.
- B. Designated program reviewers shall act and carry out responsibilities consistent with federal requirements, state law and administrative rules.
- C. The following minimum procedures shall be followed prior to reducing or withholding funds from a recipient:
 - (1) The USOE, with assistance from directors, coordinators and program specialists, shall draft and implement a consistent monitoring procedure that includes standards for both recipient program outcomes and financial compliance. This monitoring program shall be communicated to the recipient regularly, and proper documentation of monitoring and compliance procedures conducted by USOE staff shall be maintained at the USOE.
 - (2) Recipients that do not demonstrate satisfactory outcomes, demonstrate noncompliance with program requirements or allowable program expenditures, or those that do not comply with requests to provide accurate and complete program or financial information enabling determination of compliance may be placed on corrective action.
 - (3) All courses of action should be discussed with the USOE deputy/associate superintendent who supervises the program, prior to placing recipients on a corrective action plan as follows:
 - (a) Corrective action plans shall clearly outline all areas of noncompliance and establish a reasonable time frame for the recipient to correct identified issues.
 - (b) Notification and a copy of the corrective action plan shall be communicated in writing to a program administrator as well as the superintendent/CEO and business administrator of the school district or school district program, charter school or charter school program, contractor, other recipient in question, the USOE deputy/associate superintendent over the program, the USOE internal auditor, and the State Superintendent.
 - (4) Directors, coordinators and program specialists shall follow up with the recipient to clarify questions and assist the recipient in establishing appropriate corrective measures to

further compliance.

(5) If a recipient does not respond or does not satisfy the requirements of the corrective action plan by established deadline(s), the program director, coordinator, or supervisor shall notify the Internal Auditor, who will notify the State Superintendent.

(6) Verification of noncompliance and contact with the recipient to discuss and investigate the issues addressed in the corrective action plan shall be left to the discretion of the State Superintendent, Board Audit Committee and Internal Auditor.

(7) The Board shall determine if and at what level funding for programs may be withheld or terminated by the State Superintendent and when the Board should withhold or terminate a program or validate the State Superintendent's recommendation for withholding or termination of funding.

KEY: programs, noncompliance, corrective action

May 12, 2010

Art X Sec 3
53A-1-401(3)

R277. Education, Administration.**R277-419. Pupil Accounting.****R277-419-1. Definitions.**

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1.

D. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

E. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

F. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

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

H. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

I. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

J. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

K. "Retained senior" means a student beyond the general compulsory education age who is authorized at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

- (1) sickness;
- (2) hospitalization;
- (3) pending court investigation or action or both; or
- (4) other extenuating circumstances beyond the control of the student.

L. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

M. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

N. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall

count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

O. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

P. "School year" means the 12 month period from July 1 through June 30.

Q. "Self-contained" means a public school student with an IEP who receives 180 minutes or more of special education services during a typical school day.

R. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

S. "SSID" means Statewide Student Identifier.

T. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

U. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-3B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

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

W. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

X. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

Y. "YIC" means Youth in Custody.

R277-419-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of school days for individual students and schools are provided for in R277-419-7.

(2) The required school days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the school day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local

health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate school days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

- (a) entry date;
- (b) exit date;
- (c) exit or high school completion status;
- (d) whether or not an absence was excused; and
- (e) disability status (resource or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

- (i) entry date;
- (ii) exit date; and
- (iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(1) For the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in R277-484-7 and 8 and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-4. Student Membership.

A. Eligibility

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

- (a) not have previously earned a basic high school diploma or certificate of completion;
- (b) not be enrolled in a YIC program with a YIC service code other than RSM, ISI-1 or ISI-2;
- (c) not have unexcused absences on all of the prior ten consecutive school days;
- (d) be a resident of Utah as defined under Sections 53A-2-201 through 213;
- (e) be of compulsory school age or a retained senior;
- (f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

- (A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or
- (B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

(3) Special education membership for YIC students shall be reported via the Data Clearinghouse.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student

was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular and self-contained special education membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) four periods each school day, if the student is enrolled in a YIC program with a YIC secure service code of ISI-2. State-funded YIC programs operating in facilities that provide residential care may receive funding for a maximum of 205 days, with prior USOE approval;

(4) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-5. High School Completion Status.

A. LEAs shall use the following decision rules and associated codes in the Data Clearinghouse to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1) dropped out (DO), when no other status code legitimately represents the reason for departure or absence from school;

(2) died (DE);

(3) expelled (EX);

(4) graduated with a high school diploma, (G*) by satisfying one of the options specified in R277-705-4B;

(5) received a certificate of completion (CT):

(a) to qualify for a certificate, a student shall be in membership in twelfth grade on the last day of the school year; and

(b) meet any additional criteria established by the LEA

consistent with its authority under R277-705-4C;

(6) suspended (SU);

(7) transferred out of state (TO);

(8) transferred out of the country (TC);

(9) transferred to a private school (TP);

(10) transferred to home schooling (TH);

(11)(a) U.S. citizen who enrolled in another country as a foreign exchange student (FE);

(b) non-U.S. citizen who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206(2)(i)(B) shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;

(12) withdrawn (WD) due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-4(A)(1)(f)(ii);

(13) transferred to adult education (AE);

(14) transferred to higher education (HE), without first obtaining either a diploma or certificate of completion; and

(15) aged out of special education (AO).

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

R277-419-6. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-7. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education

Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1N, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment**May 12, 2010****Notice of Continuation October 5, 2007****Art X Sec 3****53A-1-401(3)****53A-1-402(1)(e)****53A-1-404(2)****53A-1-301(3)(d)****53A-3-404****53A-3-410**

R277. Education, Administration.**R277-470. Charter Schools.****R277-470-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.
- C. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.
- D. "Charter school deficiencies" means the following information:
- (1) a charter school is not satisfying financial obligations as required by Section 53A-1a-505 in the charter school's written contractual agreement;
 - (2) a charter school is not providing required documentation following reasonable warning;
 - (3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.
- E. "Charter school founding member" or "founding member" means an individual who had a significant role in the initial development of the charter school up until the first instructional day of school, the first year of operation, as submitted in writing to the State Charter School Board the first day of operation.
- F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school similar to a local board of education.
- G. "Days" means calendar days, unless specifically designated.
- H. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school at a single location.
- I. "Local education agency (LEA)" means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state, or other entities as designated by the Board, and includes any entity with state-wide responsibility for directly operating and maintaining facilities for providing public education.
- J. "Northwest Association of Accredited Schools (NAAS) accreditation" means the formal process for evaluation and approval under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist. Accreditation ensures that the credits/diploma a student earns is the result of a quality educational experience. The purpose of accreditation is to ensure excellence in education by holding schools accountable to rigorous standards and a process of continued improvement.
- K. "Neighborhood or traditional school" for purposes of this rule, means a public, non-charter school.
- L. "New charter school" as provided in Section 53A-21-401(5)(d) means any charter school through the first day of its second year with students, or a satellite school that requires a new location/campus.
- M. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.
- N. "On-going funds" means funds that are appropriated annually by the Legislature with the expectation that the funds shall continue to be appropriated annually.
- O. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency

(LEA) for purposes of public school funding and reporting.

P. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

Q. "Subaccount" means the Charter School Building Subaccount consisting of funds provided under 53A-21-401(5)(b).

R. "Subaccount Committee" means the committee established by the Superintendent under Section 53A-21-401(6).

S. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

T. "Urgent facility need" as provided in Section 53A-21-401(5)(d) means an unexpected exigency that affects the health and safety of students such as:

- (1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or
- (2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health or public school code.

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

V. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of distributing revenue on a uniform basis for each pupil.

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools.

R277-470-3. Maximum Authorized Charter School Students.

A. Local school boards may not approve district-chartered schools unless they notify the State Charter School Board by August 15 two years prior to opening of proposed district-chartered schools and estimated numbers of students.

B. The Board, in consultation with the State Charter School Board, may approve schools, expansions and satellite charter schools for the total number of students authorized under 53A-1a-502.5

C. District-chartered schools submitting applications shall be considered with all new charters.

R277-470-4. Charter School Orientation and Training.

A. All charter school applicants shall attend orientation/training sessions designated by the State Charter School Board.

B. Orientation meetings shall be scheduled at least quarterly and be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend orientation/training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training and orientation sessions may receive priority for approval from the State Charter School Board and the Board.

D. Orientation/training sessions shall provide information

including:

- (1) charter school implementation requirements;
- (2) charter school statutory and Board requirements;
- (3) charter school financial and data management requirements;
- (4) charter school legal requirements;
- (5) federal requirements for charter school funding; and
- (6) other items as determined by the State Charter School Board.

R277-470-5. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All charter schools opening or expanding by at least ten percent of overall enrollment or adding one or more grade levels shall notify all families consistent with the schools' outreach plans described in the charter agreements of:

- (1) a new or expanding charter school's purpose, focus and governance structure, including names, qualifications, and contact information of governing board members;
- (2) the number of new students that will be admitted into the school by grade;
- (3) the proposed school calendar for the charter school including at a minimum the first and last days of school, scheduled holidays, pre-scheduled professional development days (no student attendance), and other scheduled non-school days;
- (4) the charter school's timelines for acceptance or rejection of new students consistent with Section 53A-1a-506.5;
- (5) a State-approved student charter school application (beginning with the 2008-09 school year);
- (6) procedures for transferring to or from a charter school, together with applicable timelines; and
- (7) provide for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103.

B. Charter schools shall provide written notice of the information in R277-470-5A consistent with the school's outreach plan and at least 180 days before the proposed opening day of school.

C. Charter schools shall have an operative and readily accessible electronic website providing information required under R277-470-5A in place. The completed charter school website shall be provided to the State Charter School Board at least 180 days prior to the proposed opening day of school. The State Charter School Board shall require new charter schools to have websites that may be reviewed by the State Charter School Board prior to the schools posting the websites publicly.

R277-470-6. Transfer Student Criteria.

A. Charter schools shall allow students to transfer from one charter school to another and enroll students only consistent with Sections 53A-1a-506.5(2) through (6), including timelines.

B. Charter schools shall provide notice to a withdrawing student's school of residence consistent with Section 53A-1a-506.5(5) and using USOE-designated transfer forms.

C. Both charter schools and neighborhood schools shall enroll students and exchange student information consistent with 53A-1a-506.5(2)(c) and 53A-11-504 and using USOE-designated transfer forms.

D. Both charter schools and neighborhood schools shall have policies that provide procedures for properly excluding students and notifying students and parents under 53A-11-903 and 53A-11-904.

E. Neither neighborhood schools nor charter schools may discourage students from attending schools of choice in violation of state or federal law.

F. Neither charter schools nor neighborhood schools shall be required to enroll students who have been properly excluded from public schools under 53A-11-903 and 53A-11-904.

R277-470-7. Timelines - Charter School Starting Date.

A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. A local or state-chartered school shall be approved by November 30, two years prior to the school year it intends to serve students in order to be eligible for state funds.

C. A local or state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open. Each state-chartered school shall submit any lease, lease-purchase agreement, or other contract or agreement relating to the charter school's facilities or financing the charter school facilities to its chartering entity for review and advice prior to the charter school entering into the lease, agreement, or contract, consistent with Section 53A-1a-507(9).

D. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

E. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53A-1a-511.

F. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-470-8. Remediating Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school financial deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.

B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board in absence of the State Charter School Board action may:

- (1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;
- (2) immediately terminate the flow of state funds; or
- (3) recommend cessation of federal funding to the school;
- (4) take immediate or subsequent corrective action with employees who are responsible for financial deficiencies; or
- (5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remediating a charter school's financial deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-470-9. Charter School Financial Practices and Training.

A. Charter school business and financial staff shall attend USOE required business meetings for charter schools.

B. Local charter school board members and directors shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel/staff if charter schools supply current staff information and addresses and indicate the desire to attend.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-3-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

G. Charter schools shall comply with R277-471, Oversight of School Inspections.

R277-470-10. Procedures and Timelines for Schools Chartered by Local Boards to Convert to Board-Chartered Schools.

A. A charter school chartered initially by a local board of education shall notify the local board that it will seek Board approval for a state conversion to its charter with adequate notice for the local board to make staffing decisions.

B. A locally chartered school shall operate successfully for at least nine months prior to applying for conversion to a Board chartered school.

C. A charter school shall submit an application to convert from a locally chartered school to a Board chartered school to the State Charter School Board; the State Charter School Board shall provide an application for schools seeking to convert.

D. The application may require some or all of the following, depending upon the school's longevity, successful operation and existing documentation at the USOE:

- (1) current board members and founding members;
- (2) audit and financial records:
 - (a) record of state payments received;
 - (b) record of contributions received by the school from inception to date;
 - (c) test scores, including calendar of testing;
 - (d) current employees: identifying assignments and licensing status, if applicable;
 - (e) student lists, including home addresses or uniform student identifiers for current students;
 - (f) school calendar for previous school year and prospective school year;
 - (g) course offerings, if applicable;
 - (h) affidavits, signed by all board members providing or certifying (documentation may be required):
 - (i) the school's nondiscrimination toward students and employees;
 - (ii) the school's compliance with all state and federal laws;
 - (iii) that all information on application provided is complete and accurate;
 - (iv) that school meets/complies with all health and safety codes/laws;
 - (v) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;
 - (vi) that the school is operating consistent with the school's charter;
 - (vii) the school's Annual Yearly Progress status under No Child Left Behind;
 - (viii) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against

the school;

(ix) that the previous local board of education supports or does not support conversion;

E. Applications for conversion from locally chartered to Board chartered shall be considered by the State Charter School Board within 60 days of submission of complete applications, including all required documentation.

F. Following approval by the State Charter School Board, proposals of charter schools seeking conversion approval shall be submitted to the Board for review.

G. If an applicant is not accepted for conversion, the State Charter School Board shall provide adequate information for the charter school to review and revise its proposal and reapply no sooner than nine months from the previous conversion application.

H. The Board shall consider the conversion application within 45 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

I. Final approval or denial of conversion is final administrative action by the Board.

R277-470-11. Charter Schools and NCLB Funds.

A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-11.

B. To obtain its allocation of NCLB formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October upload of the Data Clearinghouse.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-12. Charter School Parental Involvement.

A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.

B. Charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds consistent with R277-477-3E.

R277-470-13. Charter School Oversight and Monitoring.

A. The State Charter School Board shall provide direct oversight to the state's board chartered schools, including:

- (1) requiring that all charter schools shall be members of and accredited by NAAS;
- (2) annual review of student achievement indicators for all schools, disaggregated for various student subgroups;
- (3) quarterly review of summary financial records and disbursements and student enrollment;
- (4) annual review conducted through site visits or random audits of personnel matters such as employee licensure and evaluations;
- (5) regular review of other matters specific to effective charter school operations as determined by the USOE charter school staff;
- (6) audits and investigations of claims of fraud or misuse of public assets or funds; and

(7) requiring that charter schools are in compliance with their charter agreement, as maintained by the USOE. It is presumed that the charter agreement maintained by the USOE is the final, official and complete agreement.

B. The Board retains the right to review or repeal charter school authorization based upon factors that may include:

- (1) financial deficiencies or irregularities; or
- (2) persistently low student achievement inconsistent with comparable schools; or
- (3) failure of the charter school to comply with state law, Board rules, or directives; or
- (4) failure to comply with currently approved charter commitments.

C. All charter schools shall amend their charters to include the following statement:

To the extent that any charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted and enforced to comply with such law or rule and all other provisions of the charter school shall remain in full force and effect.

D. District charter school authorizers shall:

- (1) visit a charter school at least once during its first year of operation;
- (2) visit a charter school as determined in the review process; and
- (3) provide written reports to the charter schools after the visits.

R277-470-14. Approved Charter School Expansion.

A. The following shall apply to requests for expansion for approved and operating charter schools:

- (1) The school satisfies all requirements of state law and Board rule.
- (2) The approved Charter Agreement shall provide for an expansion consistent with the request; or
- (3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:
 - (a) the school district in which the charter school is located has been notified of the proposed expansion in the same manner as required in Section 53A-1a-505(1);
 - (b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;
 - (c) the school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;
 - (d) students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;
 - (e) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. The charter school governing board shall file a request with the State Charter School Board for an expansion no later than April 1 two years prior to the date of the proposed implementation of the expansion.

C. Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under 53A-1a-502.5(1).

R277-470-15. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school no later than April 1 two years prior to the date of the proposed

implementation of the satellite if the charter school fully satisfies the following:

- (1) The school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;
- (2) The school has operated successfully for at least three years;
- (3) Students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;
- (4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;
- (5) The school shall be financially stable; there have been no repeat findings of deficiencies on required outside audits for at least two consecutive years;
- (6) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite site school;
- (7) The school has had an audit by Charter School Section staff regarding performance of the current charter agreement, contractual agreements, and financial records; and
- (8) The school provides any additional information or documentation requested by the Charter School Section staff or the Board.

(9) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

- (1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of state law and Board rule;
- (2) A detailed explanation of the governance structure for the satellite school, including appointed or elected representation on the governing board, parental involvement and professional staff involvement in implementing the educational plan;
- (3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;
- (4) A detailed financial plan for the satellite school;
- (5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;
 - (a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-470-7C;
 - (b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.
- (6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);
- (7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the charter school satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and
- (8) A signed acknowledgment by the charter school

governing board that the board understands the satellite school shall be held accountable for its own AYP report and disaggregated financial data and reports.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

D. A charter school may not apply for more than three satellite locations.

R277-470-16. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

(1) School districts may not incur increased costs or displace eligible students to transport charter school students.

(2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.

(3) A charter school student shall board and leave the bus at the same stop each day.

(4) Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-17. Charter School Building Subaccount.

A. The Board shall establish or reauthorize a Subaccount Committee consistent with 53A-21-401(6) by July 15 annually.

(1) The Superintendent, on behalf of the Board, may annually accept nominations of individuals who meet the qualifications of 53A-21-401(6)(a) from interested parties, including individuals nominating themselves, before June 1. The Board shall appoint five Subaccount Committee members; the Committee shall consider the Governor's nomination as one of the five appointees and the State Charter School Board's nomination as one of the five appointees.

(2) Per Section 53A-21-401(6)(a), the governor shall nominate one individual who meets the qualifications of 53A-21-401(6)(a) before the Board appoints Committee members.

(3) The State Charter School Board shall nominate one individual who meets the qualifications of Section 53A-21-401(6)(a) before June 1 consistent with R277-470-17A(1).

(4) Subaccount Committee members shall be appointed by the Board to terms that do not exceed three years.

(a) In order to stagger terms, terms of appointed Committee members shall be determined by the Board, upon the effective date of this rule.

(b) Future Committee members shall serve three year terms.

(c) The USOE Charter School Director or designee shall be a non-voting Subaccount Committee member.

B. The Subaccount Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Sections 53A-21-401(6)(b) and (8).

C. The Subaccount Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful in making final recommendations to the Superintendent, the State Charter School Board and the Board. The Subaccount Committee shall also establish terms and conditions for loan repayment, consistent with Section 53A-21-401(6)(b).

D. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

(1) To apply for a loan, a charter school shall submit the

information requested on the Board's most current loan application form together with the requested supporting documentation.

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

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

(b) agrees to the interest established by the Subaccount Committee and repayment schedule of the loan designated by the Subaccount Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-21-401(5)(c) and the purpose of the approved charter;

(d) agrees to any and all audits or financial reviews ordered by the Subaccount Committee or the Board;

(e) agrees to any and all inspections or reviews ordered by the Subaccount Committee or the Board;

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

E. The Subaccount Committee shall not make recommendations to the Superintendent, the State Charter School Board or the Board until the committee receives complete and satisfactory information from the applicant and the Subaccount Committee has reached a majority recommendation.

F. The submission of intentionally false, incomplete or inaccurate information from a loan applicant shall result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

G. The Superintendent, in consultation with USOE and State Charter Board staff, shall review recommendations from the Subaccount Committee and make final recommendations to the Board.

H. The Superintendent shall submit final recommendations from the Subaccount Committee to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Subaccount Committee.

I. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Subaccount Committee.

J. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

R277-470-18. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.

B. Only the following State Charter School Board administrative decisions or recommendations may be appealed to the Board:

(1) recommendation for termination of a charter;

(2) recommendation for denial of expansions or satellite schools;

(3) recommendation for denial of local charter board proposed changes to approved charters;

(4) recommendation for denial or withholding of funds from local charter boards; and

(5) recommendation for denial of a charter.

C. No other issues may be appealed.

D. Appeals procedures and timelines

(1) The State Charter School Board shall, upon taking any of the administrative actions under R277-470-17A:

- (a) provide written notice of denial to the charter school or approved charter school;
- (b) provide written notice of appeal rights and timelines to the local charter board chair or authorized agent; and
- (c) post information about the appeals process on the State Charter School Board website and provide training to prospective charter school board members and staff regarding the appeals procedure.

(2) A local charter school board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action or recommendation.

(3) The Superintendent shall, in consultation with the Board chair, designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board staff and State Charter School Board.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

- (a) a request for parties to provide a written explanation of the appeal and related information and evidence;
- (b) a determination of time limits and scope of testimony and witnesses;
- (c) a determination for recording the hearing;
- (d) preliminary decisions about evidence; and
- (e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in her sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

R277-470-19. Miscellaneous Provisions.

A. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.

(1) Underserved student populations may include low income students, students with disabilities, English Language Learners (ELL), or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

B. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety, or welfare of students consistent with 53A-1a-510(3).

- (1) Individuals making reports shall be directed to report

suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with 62A-4a-403 and 53A-11-605(4).

(2) Additionally, Individuals may report threats to the health, safety, or welfare of students to the local charter board.

- (a) reports shall be made in writing;
- (b) reports shall be timely;
- (c) anonymous reports shall not be reviewed further.

(3) Local charter boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Local charter boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

KEY: education, charter schools

**May 12, 2010
Notice of Continuation October 10, 2008**

Art X, Sec 3
53A-1a-515
53A-1a-505
53A-1a-513
53A-1a-502
53A-1-401(3)
53A-1a-510
53A-1a-509
41-6-115
53A-1a-506
53A-21-401
53A-1a-519
53A-1a-520
53A-1a-501.5
53A-1-301
53A-1a-502.5
53A-1a-506.5
53A-12-103
53A-11-504
53A-11-903
53A-11-904
53A-1a-511
53A-1-302 and 303
53A-17a;109
53-8-211
62A-4a-403
53A-11-605

R277. Education, Administration.**R277-484. Data Standards.****R277-484-1. Definitions.**

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

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

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the database maintained on all licensed Utah educators. The database includes information such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information;
- (6) completion of employee background checks; and
- (7) a record of disciplinary action taken against the educator.

E. "Data Clearinghouse File" means the electronic file of student level data submitted by LEAs to the USOE in the layout specified by the USOE. This definition is effective until July 1, 2011.

F. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2008-09 school year to submit data to the U.S. Department of Education.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "LEA" means local education agency, which may be either a public school district or a charter school.

J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

K. "MST" means Mountain Standard Time.

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

M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically among Utah public schools and LEAs and the USOE, and allows electronic transcripts to be sent to any participating post-secondary institution. This definition becomes effective on July 1, 2011.

N. "Year" means both the school year and the fiscal year for LEAs in Utah, which runs from July 1 through June 30.

O. "YICSIS" means the Youth In Custody Student Information System.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by

ensuring timely submission of data by LEAs.

R277-484-3. Deadlines for Data Submission.

For the purpose of submission of student level data, each LEA shall participate in UTREx as of July 1, 2011. LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List - Business Services.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;

(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 7

(1) Data Clearinghouse File - final comprehensive update for prior year - Data Assessment, and Accountability - effective until July 1, 2011;

(2) UTREx - final comprehensive update for prior year - Data Assessment, and Accountability - effective on July 1, 2011.

E. July 15

(1) Adult Education - final report for prior year;

(2) Bus Driver Credentials Report - for current year - Business Services;

(3) Classified Personnel Report - for prior year - Business Services;

(4) Driver Education Report - for prior year - Educator Quality;

(5) ESEA Choice and Supplemental Services Report - for prior year;

(6) Fee Waivers Report - for prior year;

(7) Fire Drill Compliance Statement - for prior year;

(8) Home Schooled Students Report - for prior year;

(9) Teacher Benefits Report - for prior year;

(10) Pupil Transportation Statistics - for prior year:

(a) Bus Inventory Report;

(b) Year End Pupil Transportation Statistics Reports.

F. September 15

(1) Membership Audit Report - for prior year;

(2) Adult Education - Financial Audit for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;

(2) Annual Program Report (APR) - for prior year.

H. October 15

(1) Data Clearinghouse File - update as of October 1 for current year - effective until July 1, 2011;

(2) UTREx - update as of October 1 for current year - effective on July 1, 2011;

(3) YICSIS - update as of October 1 for current year.

I. November 1

(1) Enrollment and Transfer Student Documentation Audit Report - for current year;

(2) Immunization Status Report - for current year;

(3) Pupil Transportation Statistics for state funding:

(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;

(b) Schedule B (Miscellaneous Expenditure Report) - for prior year;

(4) Negotiations report - for current year.

J. November 15

(1) CACTUS - update for current year; and

(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report - for prior year.

L. December 15 - Data Clearinghouse File - update as of December 1 for current year - effective until July 1, 2011.

M. December 15 - UTREx - update as of December 1 for

current year - effective on July 1, 2011.

R277-484-4. Adjustments to Deadlines.

A. Deadlines that fall on a weekend or state holiday in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance and Statistics at least 24 hours before the specified deadline in Section 3 and include:

- (1) The reason(s) why the extension is needed;
- (2) The signatures of the LEA business administrator and the district superintendent or charter school director; and
- (3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance and Statistics shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 8 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

- (1) June 29 CACTUS Update;
- (2) July 7 Final Data Clearinghouse File - final comprehensive update for prior year- Data Assessment, and Accountability - effective until July 1, 2011;
- (3) July 7 UTREx - final comprehensive update for prior year - Data Assessment, and Accountability - effective on July 1, 2011;
- (4) November 15 CACTUS - update for current year.

R277-484-5. Official Data Source and Required LEA Compatibility.

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

- (1) school performance reports required under Section 53A-3a-602.5;
- (2) determination of adequate yearly progress as required under the ESEA; and
- (3) submission of data files to the U.S. Department of Education via EDEN.

C. Prior to an LEA acquiring a student information system, replacing an existing student information system, or modifying data elements in an existing student information system, an LEA shall have USOE approval to ensure that the LEA's new or modified student information system maintains compatibility with UTREx.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following

fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within five working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

A. If an LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 7, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

R277-484-9. Disclosure of Data for Research.

A. The USOE may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) A reasonable method shall be used to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) A standardized, de-identified research data package shall be prepared each year by the USOE for qualified researchers to systematically protect individual student data.

(3) The USOE is not obligated to fill every data request and may develop procedures to determine which requests will be filled or to assign priorities to multiple requests. The USOE/Board understands that it will respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act.

(a) In filling data requests, higher priority shall be given to requests that will help improve instruction in Utah's public schools.

(b) In filling data requests, higher priority shall be given to requests from universities, colleges, schools, faculty, students

and government entities residing in Utah.

(4) A fee may be charged to prepare data or to deliver data, particularly if the preparation requires original work. The USOE shall comply with Section 63G-2-203 in assessing fees.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to USOE at least 10 business days prior to the public release.

B. Student information

(1) Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99-31(a)(6), so that:

(a) the individual data is de-identified, meaning it is not possible to trace the data to an actual student.

(b) the recipient of student data shall agree to not report or publish data in a manner that discloses a student's identity. For example, reporting test scores for a race subgroup that has a count, also known as n-size, less than 10 could enable someone to identify the actual students and shall not be published.

C. Licensed educator information

(1) The USOE shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) Additional information/data may be released by the USOE consistent with the purposes of CACTUS, the confidentiality protections accepted by requester(s), and the benefit that the research may provide for public education in Utah, as determined by the USOE.

D. Recipients of USOE research data shall sign a USOE non-disclosure agreement if required by the USOE.

E. The Board or the USOE may commission research or may approve research requests.

F. The USOE may provide personally identifiable data about students or licensed educators consistent with state and federal law. Some data may be provided only if the researcher or contractor agrees to preserve the confidentiality of private and protected data.

KEY: data standards, reports, deadlines, research data requests

May 12, 2010

Notice of Continuation June 2, 2008

Art X Sec 3

53A-1-401(3)

53A-1-301(3)(d) and (e)

R309. Environmental Quality, Drinking Water.**R309-515. Facility Design and Operation: Source Development.****R309-515-1. Purpose.**

This rule specifies requirements for public drinking water sources. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water that consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-515-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

R309-515-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-515-4. General.**(1) Issues to be Considered.**

The selection, development and operation of a public drinking water source must be done in a manner which will protect public health and assure that all required water quality standards, as described in R309-200, are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers are advised to work closely with the Division to help assure that sources are properly sited, developed and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems established after January 1, 1998 serving more than 100 connections shall have a minimum of two sources, except where served by a water treatment plant. Community Water Systems established prior to that date, currently serving more than 100 connections, shall obtain a separate source no later than January 1, 2000. For all systems, the total developed source capacity(ies) shall equal or exceed the peak day demand of the system. Refer to R309-510-7 of these rules for procedure to estimate the peak day demand.

(4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Executive Secretary that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-200 can be met.

(5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) All the primary and secondary inorganic contaminants listed in R309-200, Table 200-1 and Table 200-5 (excluding Asbestos unless it would be required by R309-205-5(2)),

(b) Ammonia as N; Boron; Calcium; Chromium, Hex as Cr; Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, u mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO₂; Surfactant as MBAS; Total Hardness as CaCO₃; and Alkalinity as CaCO₃,

(c) Pesticides, PCB's and SOC's as listed in R309-200-5(3)(a), Table 200-2 unless the system is a transient non-community pws or, if a community pws or non-transient non-community pws, they have received waivers in accordance with R309-205-6(1)(f). The following six constituents have been

excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin,

(d) VOC's as listed in R309-200-5(3)(b), Table 200-3 unless the system is a transient non-community pws, and

(e) Radiologic chemicals as listed in R309-200-5(4) unless the system is a non-transient non-community pws or a transient non-community pws.

All analyses shall be performed by a certified laboratory as required by R309-205-4 (Specially prepared sample bottles are required),

(6) Source Classification.

Subsection R309-505-7(1)(a)(i) provides information on the classification of water sources. The Executive Secretary shall classify all existing or new sources as either:

(a) Surface water or ground water under direct influence of surface water which will require conventional surface water treatment or an approved equivalent, or as

(b) Ground water not under the direct influence of surface water.

(7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Executive Secretary prior to source approval.

R309-515-5. Surface Water Sources.**(1) Definition.**

A surface water source, as is defined in R309-110, shall include, but not be limited to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells which have been classified as being directly influenced by surface water. Surface water sources will not be considered for culinary use unless they can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Executive Secretary.

(2) Pre-design Submittal.

The following information must be submitted to the Executive Secretary and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(a) A copy of the chemical analyses required by R309-200 and described in R309-515-4(5) above, and

(b) A survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(i) determining possible future uses of impoundments or reservoirs,

(ii) the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies,

(iii) assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes,

(iv) obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water,

(v) assessing the capability of the proposed treatment process to reduce contaminants to applicable standards, and

(vi) consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

(3) Pre-construction Submittal.

Following approval of a surface water source, the following additional information must be submitted for review and approval prior to commencement of construction:

(a) Evidence that the water system owner has a legal right to divert water from the proposed source for domestic or

municipal purposes;

(b) Documentation regarding the minimum firm yield which the watercourse is capable of producing (see R309-515-5(4)(a) below; and

(c) Complete plans and specifications and supporting documentation for the proposed treatment facilities so as to ascertain compliance with R309-525 or R309-530.

(4) Quantity.

The quantity of water from surface sources shall:

(a) Be assumed to be no greater than the low flow of a 25 year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) Meet or exceed the anticipated peak day demand for water as estimated in R309-510-7 and provide a reasonable surplus for anticipated growth; and

(c) Be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal which would be anticipated in the normal operation of the treatment facility.

(5) Diversion Structures.

Design of intake structures shall provide for:

(a) Withdrawal of water from more than one level if quality varies with depth;

(b) Intake of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) Separate facilities for release of less desirable water held in storage;

(d) Occasional cleaning of the inlet line;

(e) A diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and

(f) Suitable protection of pumps where used to transfer diverted water (refer to R309-540-5).

(6) Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) Removal of brush and trees to the high water level;

(b) Protection from floods during construction;

(c) Abandonment of all wells which may be inundated (refer to applicable requirements of the Division of Water Rights); and

(d) Adequate precautions to limit nutrient loads.

R309-515-6. Ground Water - Wells.

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination as to whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers, particularly community water suppliers, should assess the capability of their system in the event of a power outage. If gravity fed spring sources are not available, one or more of the system's well sources should be equipped for operation during power outages. In this event:

(a) To ensure continuous service when the primary power has been interrupted, a power supply should be provided through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and

(b) When automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line should be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office. For public drinking water

supply wells the rules of R655-4 still apply and must be followed in addition to these rules.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-600. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as follows:

(a) sewer lines shall be ductile iron pipe with mechanical joints or fusion welded high density polyethylene plastic pipe (solvent welded joints shall not be accepted);

(b) lateral to main connection shall be shop fabricated or saddled with a mechanical clamping watertight device designed for the specific pipe;

(c) the sewer pipe to manhole connections shall be made using a shop fabricated sewer pipe seal ring cast into the manhole base (a mechanical joint shall be installed within 12 inches of the manhole base on each line entering the manhole, regardless of the pipe material);

(d) the sewer pipe shall be laid with no greater than 2 percent deflection at any joint;

(e) backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690;

(f) sewer manholes shall meet the following requirements:

(i) the manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be shop fabricated in a single concrete pour.

(ii) the manholes shall be constructed of reinforced concrete.

(iii) all sewer lines and manholes shall be air pressure tested after installation.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-600-13, and

(ii) engineering plans and specifications governing the well drilling, prepared by a licensed well driller holding a current Utah Well Drillers Permit if previously authorized by the Executive Secretary or prepared, signed and stamped by a licensed professional engineer or professional geologist licensed to practice in Utah.

(b) Grouting Inspection During Well Construction.

(i) Authorized Individuals

(A) The following individuals are authorized to witness the well sealing procedure for a public drinking water well:

(I) An engineer or a geologist from the Division of Drinking Water,

(II) A district engineer of the Department of Environmental Quality,

(III) An authorized representative of the Division of Water Rights, or

(IV) An individual having written authorization from the Executive Secretary and meeting the below listed criteria.

(B) At the time of the well sealing an individual, who is authorized per (i)(A)(IV), shall present to the well driller a copy of the letter authorizing him or her to witness a well sealing on behalf of the Division of Drinking Water. A copy of this letter shall be appended to the witness certification letter.

(C) At least three days before the anticipated well grouting the well driller shall arrange for an authorized witness listed in (i)(A) above to witness the procedure. (See R309-515-6(6)(i)).

(ii) Obtaining Authorization

(A) To be authorized per (i)(A)(IV) above to witness a well sealing procedure, an individual must have no relationship to the driller or the well's owner and have at least five years professional experience designing wells, supervising well drilling or other equivalent experience associated with well drilling or well sealing that are acceptable to the Executive Secretary.

(B) Individuals, desiring the Executive Secretary's authorization to witness a well grouting procedure, shall provide the following information to the Executive Secretary for review over his or her signature attesting to the correctness of the information:

(I) A detailed description of the applicant's experience with well drilling projects, including number of years of experience and type of work. Three references confirming this professional experience are required.

(II) Evidence of licensure as a professional engineer or professional geologist in Utah.

(III) No relationship may exist between a person authorized to witness well sealings and a well driller that would serve as the basis for suspicion of favoritism, leniency or punitive action in the performance of this task. Examples of such relationships would be: family; former long term employment; business partnerships, either formal or informal; etc. The Executive Secretary's decision, with right of appeal to the Drinking Water Board, shall be accepted relative to what constitutes a conflict of interest or a relationship sufficient to disqualify an applicant from all or specific witness opportunities.

(IV) An acknowledgement that he/she would not be acting as an agent or employee of the State of Utah and any losses incurred while acting as a witness would not be covered by governmental immunity or Utah's insurance.

(VI) Willingness to follow established protocols and attend such training events as may be required by the Executive Secretary.

(VII) Complete with a minimum 75% passing grade, an examination on water well drilling rules, as offered by the Division of Water Rights.

(C) The Executive Secretary may rescind the authorization if an individual fails to comply with the criteria or conditions of authorization listed above.

(iii) Well Seal Certification

The individual witnessing the well sealing procedure shall provide a signed letter to the Executive Secretary within 30 days of the well sealing including the following:

(A) Certification that the well sealing procedure met all the requirements of Rule R309-515-6(6)(i);

(B) The water right under which the well was drilled and the well driller's license number;

(C) The public water system name (if applicable);

(D) The latitude and longitude of the well and method used for its determination;

(E) The well head's approximate elevation;

(F) Casing diameter(s), length(s), and material(s);

(G) The size of the annulus between the borehole and casing;

(H) A description of the sealing process including the sealing material used, its volume, density, method of placement, and depth from surface; and

(I) The names and company affiliations of other individuals observing the sealing procedure including, but not limited to the well driller, the well owner, and/or a consultant.

(c) After completion of the well drilling the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by

the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the authorized individual described in R309-515-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the pump test including the yield vs. drawdown test as described in R309-515-6(10)(b) along with comments / interpretation by a licensed professional engineer or licensed professional geologist of the graphic drawdown information required by R309-515-6(b)(vi)(E);

(iv) a copy of the chemical analyses required by R309-515-4(5);

(v) documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes from the well source;

(vi) a copy of complete plans and specifications prepared, signed and stamped by a licensed professional engineer covering the well housing, equipment and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-500-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 1 found in R655-4-9.4 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 1, 2001, Division of Water Rights);

(ii) have additional thickness and weight if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;

(v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Executive Secretary based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ANSI/ASTM Standard F480-76 and shall bear the logo NSF-wc indicating

compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances or bacterial contamination to the well water. Lead, or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperture entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and

(v) be provided with a bottom plate or washdown bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications. and

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) Grouting Techniques and Requirements.

For all public drinking water wells the annulus between the outermost well casing and the borehole wall shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Executive Secretary (see R309-500-4(1)). If more than one casing is used, including a conductor casing, the annulus between the outermost casing and the next inner casing shall be sealed with grout (meeting the grouting materials requirements of R309-515-6(i)(ii) herein) or with a water tight steel ring having a thickness equal to that of the permanent well casing and continuously welded to both casings.

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-600-6(1)(x) (see also R309-515-6(6)(i)(iii)(D) below).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the outermost permanent casing and the drilled hole, taking into consideration any joint couplings.

(B) Additional information is available from the Division for recommended construction methods for grout placement.

(C) The casing(s) must be provided with sufficient guides welded to the casing to permit unobstructed flow and uniform thickness of grout.

(ii) Grouting Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two inch openings. Additives may be used to increase fluidity subject to approval by the Executive Secretary.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available a seal of swelling bentonite meeting the requirements of R655-4-9.4.2 may be used when approved by the Executive Secretary.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings shall be removed prior to or during the well sealing operation. Any exceptions shall be approved by the State Engineer and evidence of approval submitted to the Executive Secretary (see R655-4-9.4.3.1 for conditions surrounding leaving temporary surface casing in place. A temporary construction casing is a casing not intended to be part of the permanent well.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600-6(1)(x)).

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set; usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible the water must be dosed to give a 100 mg/l free chlorine residual. Refer also to the administrative rules of the Division of Water Rights in this regard.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material is to be of well rounded particles, 95 percent siliceous material, that are smooth and uniform, free of foreign material, properly sized, washed and then disinfected immediately prior to or during placement,

(ii) the gravel pack is placed in one uniform continuous operation,

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-515-6(6)(b) or R309-515-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum

specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a completed well until permanent equipment is installed.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned well is filled with cement- grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of the desired design discharge rate,

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to the desired design discharge rate,

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing),

(C) depth of test pump intake,

(D) time and date of starting and ending test(s),

(vi) For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes),

(B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth),

(E) provide graphic evaluation on semi-logarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Division.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-105-10(7) and/or R309-515-8(2) for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

If the excavation surrounding the well casing allowing installation of the pitless unit compromises the surface seal the competency of the surface seal shall be restored. Torch cut holes in the well casing shall be to neat lines closely following the outline of the pitless adapter and completely filled with a

competent weld with burrs and fins removed prior to the installation of the pitless unit and adapter.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Executive Secretary,

(ii) be used to make a connection to a water well casing that is made below the ground. A below the ground connection shall not be submerged in water during installation,

(iii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iv) pitless adapters or pitless units to be used shall contain a label or imprint indicating compliance with the Water Systems Council Pitless Adapter Standard (PAS-97),

(v) have suitable access to the interior of the casing in order to disinfect the well,

(vi) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables,

(vii) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(viii) allow at least one check valve within the well casing,

(ix) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(x) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(xi) be of watertight construction throughout,

(xii) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xiii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiv) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow and a shutoff valve,

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing,

(vii) be properly anchored to prevent movement, and

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed

in such a manner as to prevent entrance of foreign materials.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-540, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Executive Secretary.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-515-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-540-5(2) (a) through (h)).

(f) Fencing.

Where necessary to protect the quality of the well water the Executive Secretary may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

R309-515-7. Ground Water - Springs.

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be "under the direct influence of surface water" will have to be given "surface water treatment".

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring should only be made after consideration of the requirements of R309-515-4. Springs must be located in an area which shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-600-13(2). If certain precautions are taken, sewer lines may be permitted

within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-515-6(4).

(3) Surface Water Influence.

Some springs yield water which has been filtered underground for years, other springs yield water which has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be "under the direct influence of surface water", it shall be given "conventional surface water treatment" (refer to R309-505-6).

(4) Pre-construction Submittal

Before commencement of construction of spring development improvements the following information must be submitted to the Executive Secretary and approved in writing.

(a) Detailed plans and specifications covering the development work.

(b) A copy of an engineer's or geologist's statement indicating:

- (i) the historical record (if available) of spring flow variation,
- (ii) expected minimum flow and the time of year it will occur,
- (iii) expected maximum flow and the time of year it will occur,
- (iv) expected average flow,
- (v) the behavior of the spring during drought conditions.

After evaluating this information, the Division will assign a "firm yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "desired design discharge rate" in R309-110).

(c) A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes from the spring source.

(d) A Preliminary Evaluation Report on source protection issues as required by R309-600-13.

(e) A copy of the chemical analyses required by R309-515-4(5).

(f) An assessment of whether the spring is "under the direct influence of surface water" (refer to R309-505-7(1)(a)).

(5) Information Required after Spring Development.

After development of a culinary spring, the following information shall be submitted:

- (a) Proof of satisfactory bacteriologic quality.
- (b) Information on the rate of flow developed from the spring.
- (c) As-built plans of spring development.

(6) Operation Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, by the Executive Secretary (see R309-500-9).

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes or tunnels must be covered with a minimum of ten feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ten feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

- (i) the liner has a minimum thickness of at least 40 mils,
- (ii) all seams in the liner are folded or welded to prevent

leakage,

(iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner,

(iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner,

(v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner,

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-545 with respect to access openings, venting, and tank overflow. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-110). In remote areas where no grazing or public access is possible, the fencing requirement may be waived by the Executive Secretary. In populated areas a six foot high chain link fence with three strands of barbed wire may be required.

(f) Within the fenced area all vegetation which has a deep root system shall be removed.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent flow measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible so as to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

R309-515-8. Operation and Maintenance.

(1) Spring Collection Area Maintenance.

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Executive Secretary.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Division. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

KEY: drinking water, source development, source maintenance
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**R315. Environmental Quality, Solid and Hazardous Waste.
R315-16. Standards for Universal Waste Management.
R315-16-1. General.**

1.1 SCOPE

(a) This rule establishes requirements for managing the following:

- (1) Batteries as described in section 1.2;
- (2) Pesticides as described in section 1.3;
- (3) Thermostats as described in section 1.4; and
- (4) Mercury-containing lamps as described in section 1.5.

(b) This rule provides an alternative set of management standards in lieu of regulation under R315-1 through R315-101.

1.2 APPLICABILITY - BATTERIES

(a) Batteries covered under R315-16.

(1) The requirements of this rule apply to persons managing batteries, as described in section 1.9, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under 40 CFR part 266, subpart G, as incorporated by reference at R315-14-6, are subject to management under this rule.

(b) Batteries not covered under R315-16. The requirements of this rule do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under R315-14-6.

(2) Batteries, as described in section 1.9, that are not yet wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in section 1.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded, e.g., when sent for reclamation.

(2) An unused battery becomes a waste on the date the handler decides to discard it.

1.3 APPLICABILITY - PESTICIDES

(a) Pesticides covered under R315-16. The requirements of this rule apply to persons managing pesticides, as described in section 1.9, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under R315-16. The requirements of this rule do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with R315-5-7. R315-5-7 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with R315-2-7(b)(3);

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in R315-1 through R315-101;

(3) Pesticides that are not wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as

described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in R315-2-10 or if it exhibits one or more of the characteristics identified in R315-2-9.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard, e.g., burn the pesticide for energy recovery.

(2) An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard, e.g., burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under R315-2-2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including R315-16. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under R315-2-2, does not cause the pesticide to be a solid waste, i.e., the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including R315-16. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not decided to discard, them, e.g., burn for energy recovery. These pesticides remain subject to the requirements of FIFRA.

1.4 APPLICABILITY - MERCURY THERMOSTATS

(a) Thermostats covered under R315-16. The requirements of this section apply to persons managing thermostats, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) Thermostats not covered under R315-16. The requirements of this section do not apply to persons managing the following thermostats:

(1) Thermostats that are not yet wastes under R315-2. Paragraph (c) of this section describes when thermostats become wastes.

(2) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste thermostats.

(1) A used thermostat becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused thermostat becomes a waste on the date the handler decides to discard it.

1.5 APPLICABILITY - LAMPS

(a) Lamps covered under R315-16. The requirements of this section apply to persons managing lamps, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) Lamps not covered under R315-16. The requirements of R315-16 do not apply to persons managing the following lamps:

(1) Lamps that are not yet wastes under R315-2 as provided in paragraph (c) of this section.

(2) Lamps, that are not hazardous waste. A lamp is a

hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9(a) and (d) - (g).

(c) Generation of waste lamps.

(1) A used lamp becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused lamp becomes a waste on the date the handler decides to discard it.

1.8 APPLICABILITY - HOUSEHOLD AND CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR WASTE

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(1) Household wastes that are exempt under R315-2-4 and are also of the same type as the universal wastes defined in section 1.9; or

(2) Conditionally exempt small quantity generator wastes that are exempt under R315-2-5 and are also of the same type as the universal wastes defined in section 1.9.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this rule must manage the commingled waste under the requirements of this rule.

1.9 DEFINITIONS

(a) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(b) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 16-2.4(a) and (c) and sections 16-3.4(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(c) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y.

(d) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in R315-2 of this rule, or whose act first causes a hazardous waste to become subject to regulation.

(e) "Lamp," also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(f) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who accumulates 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or thermostats, calculated collectively, at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(g) "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. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

(h) "Pesticide" means any substance or mixture of

substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDCA section 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this section.

(i) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who does not accumulate 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or thermostats, calculated collectively, at any time.

(j) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of sections 16-2.4(c)(2) or 16-3.4(c)(2).

(k) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of R315-16:

(1) Batteries as described in section 16-1.2;

(2) Pesticides as described in section 16-1.3;

(3) Thermostats as described in section 16-1.4; and

(4) Lamps as described in section 16-1.5.

(l) "Universal Waste Handler":

(1) Means:

(i) A generator, as defined in this section, of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats, except under the provisions of sections 16-2.4(a) or (c), or 16-3.4(a) or (c), disposes of, or recycles universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(m) "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(n) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

R315-16-2. Standards for Small Quantity Handlers of Universal Waste.

2.1 APPLICABILITY

This section applies to small quantity handlers of universal waste as defined in section 16-1.9.

2.2 PROHIBITIONS

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-2.8; or by managing specific wastes as provided in section 16-2.4.

2.3 NOTIFICATION

A small quantity handler of universal waste is not required to notify the Division of universal waste handling activities.

2.4 WASTE MANAGEMENT

(a) Universal waste batteries. A small quantity handler of

universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but must be immediately closed after removal:

- (i) Sorting batteries by type;
- (ii) Mixing battery types in one container;
- (iii) Discharging batteries so as to remove the electric charge;
- (iv) Regenerating used batteries;
- (v) Disassembling batteries or battery packs into individual batteries or cells;
- (vi) Removing batteries from consumer products; or
- (vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, must determine whether the electrolyte or other solid waste exhibit a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) Except for 40 CFR 265.197(c), 265.200, and 265.201, a tank that meets the requirements of R315-7-17, which incorporates 40 CFR part 265, subpart J by reference; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste thermostats. A small quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents

of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(i) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in R315-2-9:

(A) Mercury or clean-up residues resulting from spills or leaks; or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules, e.g., remaining thermostat units.

(ii) If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the mercury, residues, or other waste and must manage it subject to R315-5.

(iii) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents release of any universal waste or component of a universal waste to the environment as follows:

(1) A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack

evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

2.5 LABELING/MARKING

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in section 16-1.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in section 16-1.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (ii) of this section is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) The words "Universal Waste-Pesticide" or "Universal Waste Pesticides."

(d) Universal waste thermostats, i.e., each thermostat, or a container in which the thermostats are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury Thermostat" or "Universal Waste Mercury Thermostats."

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

2.6 ACCUMULATION TIME LIMITS

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling each individual item of universal waste, e.g., each battery, lamp, or thermostat with the date it

became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

2.7 EMPLOYEE TRAINING

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type, or types of universal waste handled at the facility.

2.8 RESPONSE TO RELEASES

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with R315-5.

2.9 OFF-SITE SHIPMENTS

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of section 16-4 of this rule while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Division of Solid and Hazardous Waste of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Division will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

2.10 TRACKING UNIVERSAL WASTE SHIPMENTS

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

2.11 EXPORTS

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the handler is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, must:

(a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4) and (6), 262.53(b), and 262.57, as incorporated by reference at R315-5-5;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 CFR part 262 subpart E, as incorporated by reference at R315-5-5; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

2.12 TESTING REQUIREMENTS

A determination of whether or not mercury-containing lamps are hazardous waste shall be performed by a Utah certified laboratory using the Toxicity Characteristic Leaching Procedure according to:

(a) R315-50-7, which incorporates the requirements of 40 CFR 261, Appendix II, 1993 ed.; and

(b) the Science Applications International Corporation report, "Analytical Results of Mercury in Fluorescent Lamps," section 6.0, "Summary Guidelines for the Extraction of Fluorescent Lamps," 1992, prepared for the U.S. Environmental Protection Agency, which is adopted and incorporated by reference.

R315-16-3. Standards for Large Quantity Handlers of Universal Waste.

3.1 APPLICABILITY

This section applies to large quantity handlers of universal waste as defined in section 16-1.9.

3.2 PROHIBITIONS

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-3.8; or by managing specific wastes as provided in section 16-3.4.

3.3 NOTIFICATION

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Executive Secretary, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified the Division of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who

manages recalled universal waste pesticides as described in section 16-1.3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all of the types of universal waste managed by the handler, e.g., batteries, pesticides, thermostats, lamps;

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste, e.g., batteries, pesticides, thermostats, and lamps, the handler is accumulating above this quantity.

3.4 WASTE MANAGEMENT

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but must be immediately closed after removal:

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products as a result of the activities listed above, must determine whether the electrolyte or other solid waste, or both, exhibits a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under

reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of R315-7-17, which incorporates by reference 40 CFR part 265 subpart J, excluding the requirements of 40 CFR 265.197(c), 265.200, and 265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste thermostats. A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(i) A large quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in R315-2-9:

(A) Mercury or clean-up residues resulting from spills or leaks; or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules, e.g., remaining thermostat units.

(ii) If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the mercury, residues, or other waste and is subject to R315-5.

(iii) If the mercury, residues, or other solid waste is not

hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

3.5 LABELING/MARKING

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container or tank in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in R315-16-1-3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in R315-16-1-3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides".

(d) Universal waste thermostats, i.e., each thermostat, or a container or tank in which the thermostats are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury Thermostat" or "Universal Waste Mercury Thermostats".

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

3.6 ACCUMULATION TIME LIMITS

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section

are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling the individual item of universal waste, e.g., each battery, lamp, or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

3.7 EMPLOYEE TRAINING

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

3.8 RESPONSE TO RELEASES

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the material resulting from the release, and is subject to R315-5.

3.9 OFF-SITE SHIPMENTS

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of section 16-4 while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171 through 180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must

ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Division of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Division will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

3.10 TRACKING UNIVERSAL WASTE SHIPMENTS

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received, e.g., batteries, pesticides, lamps, or thermostats;

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent, e.g., batteries, pesticides, thermostats, or lamps;

(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A large quantity handler of universal waste must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste must retain the records described in paragraph (b) of this section for at least three years from the date a shipment of universal waste left the facility.

3.11 EXPORTS

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those

OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the handler is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, must:

(a) Comply with the requirements applicable to a primary exporter in R315-5-5;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR, part 262, as incorporated by reference at R315-5-5; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

3.12 TESTING REQUIREMENTS

A determination of whether or not mercury-containing lamps are hazardous waste shall be performed by a Utah certified laboratory using the Toxicity Characteristic Leaching Procedure according to:

(a) R315-50-7, which incorporates the requirements of 40 CFR 261, Appendix II, 1993 ed.; and

(b) The Science Applications International Corporation report, "Analytical Results of Mercury in Fluorescent Lamps," section 6.0, "Summary Guidelines for the Extraction of Fluorescent Lamps," which is adopted and incorporated by reference.

R315-16-4. Standards for Universal Waste Transporters.

4.1 APPLICABILITY

This section applies to universal waste transporters, as defined in R315-16-1.9.

4.2 PROHIBITIONS

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-4.5.

4.3 WASTE MANAGEMENT

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste, shipments do not require a manifest under 40 CFR 262, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.", nor may the hazardous material's proper shipping name be modified by adding the word "waste."

4.4 ACCUMULATION TIME LIMITS

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements of sections 16-2 or 16-3 of this rule while storing the universal waste.

4.5 RESPONSE TO RELEASES

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether

any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of R315-1 through R315-101. If the waste is determined to be a hazardous waste, the transporter is subject to R315-5.

4.6 OFF-SITE SHIPMENTS

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172.

4.7 EXPORTS

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the transporter is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

R315-16-5. Standards for Destination Facilities.

5.1 APPLICABILITY

(a) The owner or operator of a destination facility as defined in section 16-1.9 is subject to all applicable requirements of R315-3, R315-7, R315-8, R315-13, R315-14, and the notification requirement under section 3010 of RCRA.

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with 40 CFR 261.6(c)(2), as incorporated by reference at R315-2-6.

5.2 OFF-SITE SHIPMENTS

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(1) Send the shipment back to the original shipper, or

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the a owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the shipper. The Division will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of non-hazardous, non-universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

5.3 TRACKING UNIVERSAL WASTE SHIPMENTS.

(a) The owner or operator of a destination facility must

keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received, e.g., batteries, pesticides, thermostats, or lamps;

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

R315-16-6. Import Requirements.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this rule, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of section 16-4 of this rule.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of sections 16-2 or 16-3, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of section 16-5 of this rule.

(d) Persons managing universal waste that is imported from an OECD country as specified in R315-5-5, which incorporates by reference 40 CFR 262,58(a)(1), are subject to paragraphs (a) through (c) of this section, in addition to the requirements of R315-5-8, which incorporates by reference 40 CFR 262, subpart H.

R315-16-7. Petitions to Include Other Wastes Under R315-16.

7.1 GENERAL

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to R315-16 may petition for a regulatory amendment under this section and R315-2.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Executive Secretary that regulation under the universal waste regulations of R315-16 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by R315-2-17(b). The petition should also address as many of the factors listed in R315-16-7.2 as are appropriate for the waste or waste category addressed in the petition.

(c) The Executive Secretary will evaluate petitions using the factors listed in R315-16-7.2. The Executive Secretary will grant or deny a petition using the factors listed in section 16-7-2. The decision will be based on the weight of evidence showing that regulation under R315-16 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Executive Secretary may request additional information needed to evaluate the merits of the petition.

7.2 FACTORS FOR PETITIONS TO INCLUDE OTHER WASTES UNDER R315-16

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, or if not listed, a proportion of the waste stream

exhibits one or more characteristics of hazardous waste identified in R315-2-9. When a characteristic waste is added to the universal waste regulations of R315-16 by using a generic name to identify the waste category, e.g., batteries, the definition of universal waste in section 16-1.9 will be amended to include only the hazardous waste portion of the waste category, e.g., hazardous waste batteries. Thus, only the portion of the waste stream that does exhibit one or more characteristics, i.e., is hazardous waste, is subject to the universal waste regulations of R315-16;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments, including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities;

(c) The waste or category of waste is generated by a large number of generators, e.g., more than 1,000 nationally, and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste, including packaging, marking, and labeling practices, would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner, e.g., waste management requirements appropriate to be added to R315-16, sections 2.4, 3.4, and 4.3; and applicable Department of Transportation requirements would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under R315-16 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems, e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, and municipal sewer or stormwater systems, to recycling, treatment, or disposal in compliance with Utah Code Annotated 19-6.

(g) Regulation of the waste or category of waste under R315-16 will improve implementation of and compliance with the hazardous waste regulatory program; and

(h) Such other factors as may be appropriate.

KEY: hazardous waste

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19-6-105

19-6-106

**R315. Environmental Quality, Solid and Hazardous Waste.
R315-102. Penalty Policy.**

R315-102-1. Purpose, Scope, and Applicability.

(a) Subsection 19-6-113(2) of the Utah Solid and Hazardous Waste Act provides that any person who violates any order, plan, rule, or other requirement issued or adopted under the Act is subject in a civil proceeding to a penalty of not more than \$13,000 per day for each day of violation. Subsection 19-6-721(1) of the Used Oil Management Act provide that any person who violates any order, plan, rule, or other requirement issued or adopted under the Acts is subject in a civil proceeding to a penalty of not more than \$10,000 per day for each day of violation. Subsection 19-6-104(1)(e) of the Utah Solid and Hazardous Waste Act allows the Board to settle or compromise administrative or civil actions initiated to compel compliance with the Act or rules adopted under the Act.

(b) The following criteria are to be used by the Executive Secretary of the Board for determining amounts which (1) may be sought in settlement of enforcement actions, and which (2) may be accepted in settlement of enforcement actions.

(c) The procedures in R315-102 are intended solely for the guidance of the Executive Secretary and are not intended, and cannot be relied upon, to create a cause of action against the State.

R315-102-2. Criterion 1: Factors.

The Executive Secretary shall consider the following factors when calculating a settlement amount:

(a) Economic benefit of noncompliance. These are the costs a person may save by delaying or avoiding compliance with applicable laws or rules.

(b) Gravity of the violation. This component of the calculation shall be based on:

(1) the extent of deviation from the rules, and

(2) the potential for harm to human health and the environment, regardless of the extent of harm that actually occurred.

(c) The number of days of noncompliance.

(d) Good faith efforts to comply or lack of good faith. This takes into account the openness in dealing with the violations, promptness in correction of the problems, and the degree of cooperation with the State to include accessibility to information and the amount of State effort necessary to bring the person into compliance.

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the events constituting the violation, the foreseeability of the events constituting the violation, whether the violator took reasonable precautions to prevent the violation, and whether the violator knew, or should have known, of the hazards associated with the conduct or the legal requirements which were violated.

(f) History of compliance or noncompliance. The settlement amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the settlement amount may be adjusted downward when it is shown that the violator has a good compliance record.

(g) Ability to pay. The settlement amount may be adjusted downward based on a person's inability to pay. This should be distinguished from a person's unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the settlement under an installment plan, delayed payment schedule, reduced penalty amount, or any combination of these options.

(h) Other unique factors.

R315-102-3. Criterion 2: Calculation of Settlement Amounts.

(a) Violations are grouped into the following categories based on the gravity of the violation:

(1) Major potential for harm, major extent of deviation from the requirement. For used oil, major potential for harm, major extent of deviation from the requirement: \$8,000 to \$10,000. For hazardous waste or constituents, or solid waste, major potential for harm, major deviation from the requirement: \$10,400 to \$13,000.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(2) Major potential for harm, moderate extent of deviation from the requirement. For used oil, major potential for harm, moderate deviation from the requirement: \$6,000 to \$8,000. For hazardous waste or constituents, or solid waste, major potential for harm, moderate deviation from the requirement: \$7,800 to \$10,400.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(3) Major potential for harm, minor extent of deviation from the requirement. For used oil, major potential for harm, minor deviation from the requirement: \$4,400 to \$6,000. For hazardous waste or constituents, or solid waste, major potential for harm, minor deviation from the requirement: \$5,720 to \$7,800.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(4) Moderate potential for harm, major extent of deviation. For used oil, moderate potential for harm, major deviation from the requirement: \$3,200 to \$4,400. For hazardous waste or constituents, or solid waste, moderate potential for harm, major deviation from the requirement: \$4,160 to \$5,720.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(5) Moderate potential for harm, moderate extent of deviation from the requirement. For used oil, moderate potential for harm, moderate deviation from the requirement: \$2,000 to \$3,200. For hazardous waste or constituents, or solid waste, moderate potential for harm, moderate deviation from the requirement: \$2,600 to \$4,160.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to

hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(6) Moderate potential for harm, minor extent of deviation from the requirement. For used oil, moderate potential for harm, minor deviation from the requirement: \$1,200 to \$2,000. For hazardous waste or constituents, or solid waste, moderate potential for harm, minor deviation from the requirement: \$1,560 to \$2,600.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(7) Minor potential for harm, major extent of deviation from the requirement. For used oil, minor potential for harm, major deviation for the requirement: \$600 to \$1,200. For hazardous waste or constituents, or solid waste, minor potential for harm, major deviation from the requirement: \$780 to \$1,560.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(8) Minor potential for harm, moderate extent of deviation from the requirements. For used oil, minor potential for harm, moderate deviation from the requirement: \$200 to \$600. For hazardous waste or constituents, or solid waste, minor potential for harm, moderate deviation from the requirement: \$260 to \$780.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(9) Minor potential for harm, minor extent of deviation from the requirements. For used oil, minor potential for harm, minor deviation from the requirement: \$40 to \$200. For hazardous waste or constituents, or solid waste, minor potential for harm, minor deviation from the requirement: \$50 to \$260.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(b) The Executive Secretary shall have the discretion to determine the appropriate amount within these ranges.

(c) If applicable, a multi-day component may be added to the settlement amount determined in R315-102-3(b). The amount used in a multi-day calculation will typically range from 5% to 20%, with a minimum of \$40 per day for used oil, and with a minimum of \$50 per day for hazardous waste or constituents, or solid waste, of the amount determined in R315-102-3(b) for each day of violation up to 179 days following the first day of violation. However, discretion is retained to consider amounts (1) of up to \$10,000 per day of violation for used oil and up to \$13,000 per day of violation for hazardous waste or constituents, or solid waste and (2) for days of violation after the first 179 days following the first day of violation.

(d) The amount calculated above may be adjusted by taking into account the factors specified in R315-102-2(d) through (h).

(e) This amount will then be added to any economic benefit gained by the person as specified in R315-102-2(a).

(f) If applicable, partial credit may be given for an approved supplemental environmental project.

KEY: hazardous waste

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19-6-106

R392. Health, Epidemiology and Laboratory Services, Environmental Services.

R392-303. Public Geothermal Pools and Bathing Places.

R392-303-1. Authority and Purpose.

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public geothermal pools and public geothermal bathing places.

R392-303-2. Definitions.

The following definitions apply in this rule.

(1) "Bather load" means the number of persons allowed by the operator to use a geothermal pool or geothermal bathing place at any one time or specified period of time.

(2) "Department" means the Utah Department of Health.

(3) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(4) "Flow-through" means water that is fed by a continuous supply into a pool or bathing place that causes an equal rate of flow to discharge from the pool or bathing place to waste.

(5) "Geothermal bathing place" means a natural bathing place or semi-artificial bathing place with an impoundment of geothermal water.

(6) "Geothermal pool" means a man-made basin, chamber, receptacle, tank, or tub which is filled with geothermal water or a mixture of geothermal and non-geothermal water that creates an artificial body of water.

(7) "Geothermal water" means ground water that is heated in the earth by the earth's interior.

(8) "Living unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(9) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(10) "Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

(11) "Semi-artificial bathing place" means a natural bathing place that has been modified by man.

R392-303-3. General Requirements.

(1) This rule applies to geothermal pools and geothermal bathing places that:

(a) are partially or completely filled with geothermal water that has a source temperature of at least 70 degrees Fahrenheit, 21.1 degrees Celsius; and

(b) are offered to the public for bathing or recreation.

(2) This rule does not apply to an unsupervised geothermal bathing place that the owner explicitly or tacitly allows anyone at any time to use without a fee.

(3) This rule does not apply to a geothermal pool or geothermal bathing place that is used only by a single household or only by a single group of multiple living units of four or fewer households.

(4) Except as otherwise stated in this rule, geothermal pools and geothermal bathing places, are exempt from the requirements of R392-302.

(5) This rule does not require an owner or operator to modify any portion of an existing geothermal pool facility or existing geothermal bathing place. If an owner or operator modifies any system or part of a geothermal pool or geothermal bathing place, the modified system or part must meet the requirements of this rule. However, if the Executive Director or

the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order modification consistent with the requirements of this rule.

R392-303-4. Drinking Water Supply.

(1) The owner of a geothermal pool or geothermal bathing place shall assure that all plumbing fixtures including drinking fountains, lavatories and showers at the public geothermal pool or geothermal bathing place facility are connected to a drinking water system that meets the requirements for drinking water established by the Utah Department of Environmental Quality.

(2) The owner of a geothermal pool or geothermal bathing place shall protect the connected drinking water system against back flow of contamination or back flow of water from the geothermal water source.

R392-303-5. Geothermal Source Water Quality.

(1)(a) The owner of a geothermal pool or geothermal bathing place shall install a tap or sampling point that provides the operator with the ability to sample the geothermal source water before it enters the geothermal pool or geothermal bathing place impoundment.

(b) If it is impractical to directly sample the geothermal source water, the operator may sample directly from the pool or impoundment. However, at least sixteen hours must have passed since any person has been in the pool and the sample shall be taken as close to the geothermal source water inlet as practical.

(2) The operator of a geothermal pool or geothermal bathing place shall collect samples of the geothermal source water and of any other water source used to fill the pool that is not approved for drinking water by Utah Division of Drinking Water. The operator shall submit the samples for analysis to a laboratory certified under R444-14. The operator shall have the analysis performed initially and every five years thereafter to determine the levels of constituents listed in Table 1. If a geothermal pool or geothermal bathing place is in existence prior to the adoption of this rule, the owner of the facility shall submit to the local health department the results of initial source water tests within six months after the adoption of the rule. The permit applicant of a newly permitted public geothermal pool or geothermal bathing place shall submit the results of the initial source water analyses to the local health department with his application for a permit. The operator shall submit five-year samples to the local health department within six months prior to the end of the five year period.

(3) If the geothermal source water analysis required in R392-303-5(2) reports that any constituents fails any of the standards in Table 1, the owner shall do one of the following:

(a) not use the source water;

(b) implement an ongoing treatment process approved by the Department to provide source water that meets the requirements in Table 1; or

(c) at a minimum, post a caution sign outlined in R392-303-22, to notify swimmers that the water does not meet the EPA recommended drinking water standard and they swim at their own risk. The caution sign shall include the name of the constituent that does not meet the EPA standard and that there may be a health risk associated with bathing in water that contains high levels of the constituent. Based on research funded by or guidelines issued by a competent authority, including the Centers for Disease Control and Prevention or the Environmental Protection Agency, the Local Health Officer may require the operator to post the maximum recommended bathing period or to post other recommended restrictions.

Geothermal Source Water Constituents		
Constituent	Maximum	Minimum
pH	8.0	7.0
Fluoride	4.0 milligrams per liter	None
Nitrate	10 milligrams per liter	None
Nitrite	1 milligrams per liter	None
Antimony	0.006 milligrams per liter	None
Arsenic	0.010 milligrams per liter	None
Barium	2 milligrams per liter	None
Beryllium	0.004 milligrams per liter	None
Cadmium	0.005 milligrams per liter	None
Chromium	0.1 milligrams per liter	None
Copper	1.3 milligrams per liter	None
Cyanide (as free cyanide)	0.2 milligrams per liter	None
Lead	0.015 milligrams per liter	None
Mercury	0.002 milligrams per liter	None
Selenium	0.05 milligrams per liter	None
Thallium	0.002 milligrams per liter	None

R392-303-6. General Safety Requirements.

(1) Geothermal pools shall meet the requirements of R392-302-11.

(2) Head-first entry is not permitted at a geothermal bathing place except where the operator has demonstrated to the local health officer that the water depth and underwater obstructions at the entire geothermal bathing place pose no greater risk than at a diving-permitted section of a swimming pool as allowed in R392-302-11. Diving with a self-contained underwater breathing apparatus (SCUBA) is allowed at geothermal bathing places. Where head-first entry is not permitted, the operator shall place a sign that states "NO HEAD-FIRST ENTRY" in accordance with R392-303-22, 23 and 24.

(3) Geothermal pools and geothermal bathing places shall meet the following sections of R392-302:

(a) R392-302-14 Fencing, however the local health officer may grant exceptions to the height requirements for barriers in consideration of natural features for geothermal bathing places;

(b) R392-302-22 Safety Requirements and Lifesaving Equipment, except that a geothermal bathing place under 5 feet, 1.52 meters, deep is only required to meet R392-302-22(3);

(c) R392-302-23 Lighting, Ventilation and Electrical Requirements; and

(d) R392-302-30 Supervision of Bathers subsections 1 through 7.

R392-303-7. Bather Facilities.

Geothermal pools and geothermal bathing places shall meet the following sections of R392-302:

(1) R392-302-24 Dressing Rooms

(2) R392-302-25 Toilets and Showers

(3) R392-302-26 Visitors and Spectator Areas

R392-303-8. Construction Materials.

(1) Geothermal pools shall meet the requirements of R392-302-6. However, a geothermal pool with a volume less than or equal to 3,000 gallons, 11,355 liters, and a maximum depth less than 4 feet, 1.22 meters, is exempt from the color requirement of R392-302-6(5).

(2) The owner or operator of a geothermal bathing place shall notify bathers of and protect them from safety hazards by methods such as altering surfaces or structures, barricading or roping off problem areas, and posting warning signs.

R392-303-9. Bather Load.

(1) Geothermal pools and geothermal bathing places shall meet the bather load requirements in R392-302-7.

(2) If a geothermal pool or geothermal bathing place is unable to meet bacteriological water quality by other means, the owner or operator shall reduce the allowed bather load in order to meet the requirements R392-303-19.

R392-303-10. Design Detail and Structural Stability.

(1) With the exception of the provisions listed in R392-302-8(3) and R392-302-8(5), geothermal pools shall meet the provisions of R392-302-8.

(2) The owner shall submit plans for a new geothermal pool or a geothermal bathing place or the renovation or the remodeling of a geothermal pool or a geothermal bathing place to the local health department for approval based upon compliance to this rule. Renovation or remodeling includes the replacement or modification of equipment that may affect the ability of a geothermal pool or a geothermal bathing place to meet the safety and water quality standards of this rule.

(3) Geothermal bathing places used only for SCUBA diving or snorkeling are exempt from requirements of R392-303-11 through 15 and the clarity requirement in R392-303-19 if each patron signs a document acknowledging that the patron has read the list of inherent physical and environmental dangers that the geothermal bathing place has not complied with in R392-303-11 through 15 and 19, and to which the patron is exposed upon entering or using the geothermal bathing place.

R392-303-11. Depths and Floor Slopes.

(1) Geothermal pools shall meet the requirements of R392-302-9.

(2) The owner of a geothermal bathing place shall protect bathers from uneven bottoms, sudden changes in depth, and other bottom anomalies by altering the pool bottom, posting signs about the dangers, providing barriers around hazards, or roping off areas.

R392-303-12. Walls.

(1) Geothermal pools shall meet the requirements of R392-302-10.

(2) The owner of a geothermal bathing place shall protect bathers from uneven walls, submerged projections, or submerged ledges by methods such as posting signs notifying patrons of the dangers, providing barriers around hazards, or roping off areas,

R392-303-13. Ladders, Recessed Steps, and Stairs.

(1) Geothermal pools shall meet the requirements of R392-302-12.

(2) The owner of a geothermal bathing place shall provide a means of entrance into and exit from the water that include handholds and steps where needed to provide for bather safety.

R392-303-14. Decks and Walkways.

(1) Geothermal pools shall meet the requirements of R392-302-13.

(2) The owner of a geothermal bathing place shall provide safe walkways leading to the bathing place that are free of trip hazards and provide handholds where there are ramps or steps.

R392-303-15. Depth Markings and Safety Ropes.

(1) Geothermal pools shall meet the requirements of R392-302-15.

(2) The owner of a geothermal bathing place shall protect bathers from unexpected deep water by means such as posting pool depth signs, providing barriers around deep areas, or roping off areas.

R392-303-16. Circulation Systems.

(1) Geothermal pools that transport source, pool, or discharge water through pipes shall meet the requirements of R392-302-16 for piping, pipe labeling, velocity in pipes, adequate space in equipment areas, valves, and air induction systems. Geothermal pools shall meet the requirements of R392-302-16 for normal water level and vacuum cleaning systems.

(2) The owner or operator of a geothermal pool or

geothermal bathing place shall maintain flow-through 24 hours a day during the operating season, except for periods of maintenance. If the pool is drained and cleaned each day prior to use, flow-through is only required during the period that the geothermal pool is in use.

(3) A geothermal pool or geothermal bathing place with a volume greater than 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to one-fourth the pool volume every hour. A geothermal pool or geothermal bathing place with a volume less than or equal to 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to the pool volume every 30 minutes.

(a) If the results of any three of the last five E. Coli or fecal coliform samples taken from the pool exceed 63 per 50 milliliters, the owner or operator shall either increase the rate of flow-through, reduce bather load as provided in R392-303-9(2), or both increase the flow rate and reduce the bather load. The owner or operator shall adjust the bather load or the flow-through rate to a level that consistently produces E. Coli or fecal coliform levels less than 63 per 50 milliliters. If any E. Coli or fecal coliform sample exceeds 63 per 50 milliliters, the owner shall keep the pool closed until sample results for the pool are less than 63 per 50 milliliters as required in R392-303-19(3).

(b) The Local Health Officer may approve a reduced flow rate if the owner or operator of the geothermal pool or geothermal bathing place can demonstrate that the required bacteriological level can be maintained at the reduced flow rate.

(c) If the operator of a geothermal bathing place is unable to control the flow-through rate, the operator may meet the bacteriological water quality standards in section R392-303-19 by controlling bather load.

(d) If the operator of a geothermal pool maintains the disinfectant levels, chloramine levels, and pH levels within the values allowed in Table 6 of R392-302 and operates a recirculation system in the pool in compliance with the requirements of R392-302-16, the pool is exempt from the flow-through rate requirements of R392-303-16(3) except the operator shall maintain a flow-through with a maximum turnover time of 48 hours, and shall meet the bacteriologic requirements of R392-302-27(10)(a).

(4) A geothermal pool that has pumped flow shall meet the inlet requirements of R392-302-17. Geothermal bathing places and geothermal pools that have gravity flow inlets, shall either meet the requirements of R392-302-17 or the owner or operator of the pool shall demonstrate to the local health department that the inlet system provides uniform distribution of fresh water throughout the pool. A demonstration of uniform distribution includes computer simulation or a dye test witnessed by a representative of the local health department.

(5) A geothermal pool shall have a drain that allows complete emptying of the pool. Geothermal pool and geothermal bathing place submerged drain grates and covers shall meet the requirements of R392-302-18. Geothermal pool and geothermal bathing place submerged drains shall meet the anti-entrapment requirements of R392-302-18.

(6) A geothermal pool shall have overflow gutters or skimming devices that meet the applicable requirements of R392-302-19.

(7) Geothermal pools and geothermal bathing places shall have a method to determine accurate rate-of-flow in gallons per minute. If the rate-of-flow method is a rate-of flow indicator manufactured by a third party, it shall be properly installed and located according to the manufacturer's recommendations. If a field-fabricated rate-of-flow indicator such as a calibrated weir or flume is used, it shall be designed and calibrated under the direction of a licensed professional engineer. The rate-of-flow indicator must be located in a place and positioned where it can be easily read by the operator as required in R392-303-21(2). The Local Health Officer may exempt a geothermal pool or

geothermal bathing place from the requirement for a rate-of-flow indicator if the rate of flow is not adjustable or if there is no practical way to measure flow.

(8) Each geothermal pool and geothermal bathing place shall have a temperature measuring device. The operator shall measure the temperature of the pool at the warmest point. The device shall be accurate to within one degree Fahrenheit (0.6 degrees Celsius). The operator shall calibrate the thermometer in accordance with the manufacturer's specifications as necessary to ensure its accuracy.

R392-303-17. Filtration.

The owner of a flow-through geothermal pool or geothermal bathing place is not required to filter the water in the pool or bathing place, except as may be necessary to meet safety and water quality requirements. Filters shall meet the requirements of R392-302-20.

R392-303-18. Disinfectant and Chemical Feeders.

Chemical feeders or disinfectant residuals are not required in geothermal pools or geothermal bathing places, except as may be necessary to meet water quality requirements. If the operator uses any chemical, the operator shall meet the requirements of R392-302-21 for that particular chemical.

R392-303-19. Pool Water Quality.

(1) The water in a geothermal pool or geothermal bathing place must have sufficient clarity at all times so that a black disc 6 inches, 15.24 centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool (or at 12 feet, 3.66 meters, deep for pools over 12 feet, 3.66 meters, deep). The owner or operator shall close the pool or bathing place immediately if this requirement is not met. A soaking tub or similar fixture with a volume of 70 gallons or less is exempt from the clarity requirements of this subsection.

(2) The local health department or pool sampler contracted by the local health department shall collect routine bacteriological samples of the pool water at least once per month and at least two weeks apart. The local health department or their contractor may collect additional samples for investigative purposes or as a follow-up of unsatisfactory samples. The Local Health Officer shall choose or approve the dates and times that the samples are collected based on when a representative level of bacteria would likely be found. The local health department or person sampling the pool shall submit the bacteriological samples to a laboratory approved by under R444-14 to perform E. coli or fecal coliform testing.

(a) The local health department or its contracted pool sampler, as required by local health department, shall have the laboratory analyze the sample for either E. coli or fecal coliform.

(b) If the pool sampler submits the sample as required by local health department, the sampler shall require the laboratory to report sample results within five working days to the local health department and operator.

(3) If the E. coli or fecal coliform levels are found to be greater than the maximum level of 63 per 50 milliliters, the owner or operator shall close the pool until sample results show the level is below 63.

(4) If E. coli or fecal coliform levels are greater than one per 50 milliliters, the pool operator shall post the level found as required in R392-303-22.

(5) The owner or operator of a geothermal pool or geothermal bathing place should maintain the pool water temperature at a maximum of 104 degrees Fahrenheit, 40 degrees Celsius. A geothermal pool or geothermal bathing place that exceeds 104 degrees Fahrenheit, 40 degrees Celsius, at the minimum required turnover rate shall have, and employ when necessary, a method of temperature reduction in the pool

or bathing place that maintains the minimum flow-through rate required under R392-303-16(3). An approved method of temperature reduction may include methods such as the introduction of cool water from a source that has been analyzed and approved according to R392-303-5(2) or approved for drinking water by the Utah Division of Drinking Water, or such as the direct cooling of the geothermal source water by a heat exchanger, or the diversion of the geothermal source water to allow it to cool prior to entering the pool or impoundment. The temperature reduction method shall be capable of reducing the temperature of the pool within 2 hours of activation from the maximum anticipated temperature to below 104 degrees Fahrenheit, 40 degrees Celsius. If the temperature of the source water or cooling rate of the pool is difficult to control, a temperature drift of up to four degrees Fahrenheit, 2.2 degrees Celsius, is allowed if the owner or operator has activated the temperature reduction measure. The owner or operator of a geothermal pool or geothermal bathing place shall not permit bathers to use the pool if the temperature is above 108 degrees Fahrenheit, 42.2 degrees Celsius, except the owner may allow a bather to use a soaking tub or similar fixture with a volume of 70 gallons or less and a water temperature less than or equal to 110 degrees Fahrenheit, 43.3 degrees Celsius.

R392-303-20. Cleaning Pools.

(1) The owner or operator of a geothermal pool shall remove any visible dirt on the bottom of the pool at least once every 24 hours or more frequently as needed to keep the pool free of dirt and debris.

(2) The owner or operator of a geothermal pool or geothermal bathing place shall clean the water surface of the pool as often as needed to keep the pool free of scum or floating matter.

(3) The owner or operator of a geothermal pool shall keep pool surfaces, decks, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair. The owner or operator of a geothermal bathing place shall keep handholds, handrails, entrance points, walkways, dressing rooms, and equipment rooms clean and in good repair.

R392-303-21. Supervision of Pools and Bathing Places.

(1) Geothermal pools and geothermal bathing places shall meet the requirements of R392-302-29(1).

(2) The operator of a geothermal pool or geothermal bathing place shall record the flow-through rate and pool temperature prior to opening the pool or bathing place each day. To verify bather load, the operator shall record the number of patrons at the geothermal bathing place or pool every four hours that the geothermal bathing place or pool is open for use or shall record the time of day that each user checks in. If a pool uses disinfection or filtration, the operator shall keep the disinfection and filtration records required in R392-302-29. The Local Health Officer may reduce the requirement for the frequency of record keeping if a decreased frequency is more reasonable considering the likelihood of a change in the values recorded. The owner or operator shall make the records required by this section available for inspection by representatives of the local health department and shall retain the records for at least three years.

R392-303-22. Caution Sign Content.

(1)(a) The operator of a geothermal pool or a geothermal bathing place in which the requirements of Table 6 in R392-302-27 are not met for disinfectant residual shall post a caution sign with the following bulleted points:

-WATER IN THIS POOL CONTAINS NO DISINFECTANT

-BATHING IN THIS POOL MAY INCREASE YOUR

RISK OF INFECTIOUS DISEASE

-PERSONS SUFFERING FROM A COMMUNICABLE DISEASE TRANSMISSIBLE BY WATER SHALL NOT ENTER THE WATER

-KEEP POOL WATER OUT OF YOUR MOUTH AND NOSE.

(b) The operator shall post an additional sign or an addition to the sign required by this section that describes the results of the sample using a changeable element such as a "white board" or attachable digits. The sign shall state:

-THE MOST RECENT BACTERIAL RESULT OF WATER FROM THIS POOL WAS (the changeable element shall be placed at this point with the most recent fecal coliform or E. coli count per 50 milliliters posted). FOR COMPARISON, A NON-GEOTHERMAL POOL CANNOT EXCEED 1

(c) If ozone or ultraviolet light is used to treat the water, the following statement may be added to the sign; the statement shall be verbatim and state the method of treatment:

-TREATED WITH (UV LIGHT or OZONE or UV LIGHT AND OZONE if both are used)-PROVIDES SHORT-TERM DISINFECTION ONLY.

(2) If a geothermal pool or geothermal bathing place is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius, the operator shall post a separate caution sign that includes the following bulleted points:

-POOL WATER MAY EXCEED 100 DEGREES F. (37.8 DEGREES C.)

-CONSULT A PHYSICIAN IF YOU: ARE ELDERLY OR PREGNANT; HAVE HEART DISEASE, DIABETES, OR HIGH BLOOD PRESSURE; OR USE PRESCRIPTION MEDICATION

-DO NOT USE POOL IF ALONE OR UNDER THE INFLUENCE OF ANY IMPAIRING SUBSTANCE

-DO NOT USE POOL FOR MORE THAN 15 MINUTES AT A TIME

-CHILDREN UNDER 5 ARE PROHIBITED; CHILDREN UNDER 14 MUST BE WITH A PERSON OVER 18 YEARS

(3) Except at a geothermal pool or a geothermal bathing place where head-first entry is permitted, the operator shall post a warning sign that states, "NO HEAD-FIRST ENTRY" in accordance with R392-303-23 and 24.

(4) If the geothermal pool or bathing place source water fails any of the standards found in Table 1, the operator shall post a warning sign that states the following:

-POOL WATER DOES NOT MEET EPA DRINKING WATER STANDARDS FOR (the failed constituent or constituents listed in Table 1).

-(The analytical result of each failed constituent and the value of the Table 1 standard that has not been met.) For example: ARSENIC IN THE POOL IS 35 PARTS PER BILLION; EPA STANDARDS ALLOW ONLY 10.

-THERE MAY BE HEALTH RISKS ASSOCIATED WITH BATHING IN THIS WATER.

- USE AT YOUR OWN RISK

R392-303-23. Caution Sign Placement.

(1) The operator of a geothermal pool or geothermal bathing place shall post caution and warning signs that meet the requirements of this rule in conspicuous locations that are in the line of sight of a persons using the premises and readily visible so that all persons are alerted to potential hazards and informed before using the geothermal pool or geothermal bathing place.

(a) The operator shall place the caution sign required in subsection R392-303-22(1) at the reception or sales counter and no more than 10 feet from where a person checks in or pays for the use of the pool. The sign shall be visible to potential customers before they pay for entry or pass the reception or sales counter. If there are multiple geothermal pools or

geothermal bathing places at the facility, the operator shall display on the caution sign at the reception or sales counter the bacterial count of the geothermal pool or geothermal bathing place in the facility that had the highest level of E. coli or fecal coliform found in the most recent sampling event. The operator shall post an additional sign required in R392-303-22(1) at each pool or bathing place. The operator shall post the sign in a location and position readily visible and within ten feet, 3 meters, of at least one point at the water's edge. The operator shall display on the additional sign the most recent E. coli or fecal coliform count of the particular geothermal pool or geothermal bathing place.

(b) The operator shall place any caution sign required in subsection R392-303-22(2) either:

(i) next to the sign required in subsection R392-303-22(1) if the pool or all pools may exceed 100 degrees Fahrenheit, 37.8 degrees Celsius; or

(ii) within 10 feet of the entrance or entrances to each pool that is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius.

(c) The operator shall place any warning sign required in subsection R392-303-22(3) either:

(i) next to the sign(s) required in subsection R392-303-22(1) if the pool or all pools do not permit head-first entry; or

(ii) within 10 feet of the entrance or entrances to each pool that does not permit head-first entry.

(d) The operator shall place any warning sign required in subsection R392-303-22(4) either:

(i) next to the sign(s) required in subsection R392-303-22(1); or

(ii) within 10 feet of the entrance or entrances to each pool.

(2) In lieu of meeting the signage requirements listed in R392-303-22 and 23(1), the operator may have the patron sign a document that contains the same language as required for the signs required in R392-303-22. The signature is to acknowledge that the patron has received the information. The document shall disclose the most recent bacteriologic analysis results. The operator shall make a copy of the document available to each patron upon request. The operator shall retain the disclosure documents for at least one year and make them available for inspection by public health officials.

R392-303-24. Caution Sign Format Requirements.

(1) The caution sign required by R392-303-22(1) and R392-303-22(2) shall meet the following requirements:

(a) The signs shall be at least 24 inches, 61 centimeters, by 18 inches, 46 centimeters, on a white background. If the sign is larger than 24 inches, 61 centimeters, by 18 inches, 46 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety yellow in color and shall:

(i) be at least 3.3 centimeters, high and 44 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety yellow background;

(ii) have the word "CAUTION" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left

of the word "CAUTION".

(d) The safety alert symbol shall be black with a yellow field.

(e) The word "CAUTION" and the symbol shall be vertically and horizontally centered within the yellow panel.

(f) The letters in the body of the sign shall be legible, at least one centimeter high, and clearly visible.

(g) The body of the sign required in subsection R392-303-22(1) shall list the bulleted statements required in that section.

(h) The body of the sign required in subsection R392-303-22(2) shall list the bulleted statements required in that section.

(2) The warning sign required by R392-303-22(3) and R392-303-22(4) shall meet the following requirements:

(a) The signs shall be at least 17 inches, 43 centimeters, by 11 inches, 28 centimeters, on a white background. If the sign is larger than 17 inches, 43 centimeters, by 11 inches, 28 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial, arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(i) be at least 3.3 centimeters, high and 41 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety orange background;

(ii) have the word "WARNING" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING".

(d) The safety alert symbol shall be black with a safety orange field.

(e) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(f) The letters in the body of the sign shall be legible, at least one inch (2.54 centimeters) high, and clearly visible

(g) The body of the sign required in subsection R392-303-22(3) shall display the text "NO HEAD-FIRST ENTRY". The text on the body shall be centered vertically and horizontally in the space below the orange panel with "NO HEAD-FIRST" on one line and "ENTRY" on the line below.

(h) The body of the sign required in subsection R392-303-22(4) shall list the bulleted statements required in that section.

R392-303-25. Enforcement and Penalties.

A person who violates a provision of this rule is subject to a civil penalty of up to \$10,000 for each offense as provided in Section 26-23-6.

KEY: geothermal pools, geothermal natural bathing places, hot springs, geothermal spas

May 17, 2010

26-15-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-19A. Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility.****R414-19A-0. Policy Statement.**

Dialysis services are provided under the State Plan for Medicaid to cover Medicaid eligible individuals principally for the 90-day period between the first dialysis service and commencement of Medicare ESRD benefits. If Medicaid individuals are unable to qualify for Medicare, dialysis services are provided under the State Plan for Medicaid.

R414-19A-1. Authority.

The provision of clinic services for outpatient dialysis is authorized under the authority of Title 42 of the Code of Federal Regulations section 440.20, 440.90, and the Utah State Plan under clinic services.

R414-19A-2. Definition as Used in This Chapter.

1. Approved dialysis facility means any free-standing State-licensed facility providing dialysis services, and certified to participate in the Medicare program.

R414-19A-3. Eligibility Requirements.

Dialysis services are available to both categorically and medically needy Medicaid recipients.

R414-19A-4. Program Access Requirements.

Dialysis services are available to Medicaid recipients when performed through a state licensed Medicare approved dialysis facility.

R414-19A-5. Service Coverage.

1. Dialysis services, which include hemodialysis and peritoneal dialysis treatments, may be provided. Providers may bill the Division of Health Care Financing for these services only on a fee-for-service basis.

a. Hemodialysis and peritoneal dialysis services and supplies are covered if they are furnished in approved dialysis facilities. The composite rate for hemodialysis and peritoneal dialysis includes all services, items, supplies, and equipment necessary to perform dialysis. The rate includes physician evaluation as part of the dialysis service and routine laboratory tests.

b. Self-dialysis is covered when performed by an ESRD patient who has completed an appropriate course of training.

c. Hemodialysis treatments performed at home are covered when they are supervised by an approved dialysis facility, and performed by an appropriately trained patient. Treatments performed at home are covered only if the facility provides the supplies, equipment, and supervisory services necessary for home dialysis. Medicaid pays the same amount for each home dialysis treatment as it does for an in-facility treatment.

d. Monthly supervision of hemodialysis and peritoneal dialysis, including home hemodialysis, is a covered benefit.

e. Routine diagnostic and dialysis monitoring tests, e.g. hematocrit and clotting time, used by the facility to monitor the patient's fluid incident to each dialysis treatment, are covered when performed by qualified staff of the facility under the direction of a physician, as provided in the plan of care.

f. Erythropoietins are covered for the treatment of anemia for ESRD patients when:

- i. administered by the renal dialysis facility, or
- ii. administered "incident to" a physician's service outside the dialysis facility; and
- iii. hematocrit is less than 30 percent.

g. Erythropoietins are not covered when self-administered.

(2) Medically necessary renal dialysis services are covered for the first three months of dialysis pending the establishment

of Medicare eligibility. If a Medicaid client is denied Medicare eligibility, the client may continue to receive medically necessary dialysis services under Medicaid.

(3) Medicare becomes the primary reimbursement source for individuals who meet Medicare eligibility criteria. Dialysis providers must assist patients in applying for and pursuing final Medicare eligibility.

R414-19A-6. Standards of Care.

Dialysis facilities must comply with the Medicare conditions of participation as outlined in 42 CFR, Part 405 Subpart U, dated October 1, 2009, which is hereby adopted and incorporated by reference.

R414-19A-7. Limitations.

Dialysis for End Stage Renal Disease is limited to medically accepted dialysis procedures for outpatients receiving services through free-standing State-licensed facilities which are also certified to participate in the Medicare program.

R414-19A-8. Prior Authorization.

Prior authorization is not required.

R414-19A-9. Reimbursement for Services.

Payment for renal dialysis is based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges. Fees are based on the Medicare payment for dialysis in Salt Lake County, Utah.

KEY: Medicaid

May 27, 2010

Notice of Continuation May 27, 2010

26-1-5

26-18-3

R590. Insurance, Administration.**R590-171. Surplus Lines Procedures Rule.****R590-171-1. Authority.**

This rule is promulgated pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111.

R590-171-2. Purpose and Scope.

A. The purpose of this rule is:

- (1) to recognize The Surplus Line Association of Utah as the advisory organization of surplus lines producers;
- (2) to authorize The Surplus Line Association to conduct the examination of surplus lines transactions;
- (3) to authorize The Surplus Line Association to collect a stamping fee;
- (4) to require that each person licensed as a surplus lines producer in Utah be a member of the advisory organization;
- (5) to regulate access to the surplus lines market, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge; and
- (6) to prescribe procedures for the placement of insurance with surplus lines insurers.

B. This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah.

R590-171-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:

- A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.
- B. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-88.
- C. "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2)(a)(viii) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.
- D. "Surplus lines insurer" means a nonadmitted insurer that may place business, pursuant to Title 31A, Chapter 15, Part 1 and this rule, with a surplus lines producer.
- E. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

R590-171-4. Surplus Line Association of Utah.

A. Surplus Line Association of Utah is recognized as the advisory organization of surplus lines producers authorized by Section 31A-15-111.

B. Each person licensed as a surplus lines producer in Utah must be a member of the Surplus Line Association of Utah.

C. The Surplus Line Association of Utah is authorized:

- (1) to facilitate and encourage compliance by its members with the laws of Utah and the rules of the commissioner relative to surplus lines insurance and to act in other matters as specified by Section 31A-15-111;
- (2) to conduct the examination of surplus lines transactions required under Subsection 31A-15-103(11);
- (3) to make a determination that a surplus lines transaction is in compliance with Subsection 31A-15-103(11) and with

Sections R590-171-6 and 7 of this rule; and

(4) to collect the stamping fee prescribed by Subsection 31A-15-103(11)(d).

R590-171-5. Export List.

A. (1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with surplus lines insurers.

(2) The commissioner may consider the following in determining the insurance coverages and classes to be listed:

- (a) the current marketplace;
- (b) information from the Surplus Line Association Board of Directors;
- (c) information from admitted and surplus lines insurers doing business in Utah;
- (d) information from other sources, including producers and consumers; and
- (e) any other information the commissioner deems relevant.

(3) Any person may request in writing that, at the next publication of the list, the commissioner add or remove a coverage or class of insurance from the list. The person must provide evidence of market conditions to substantiate the request.

B. The list shall be published at least annually but may be revised and republished at any time.

R590-171-6. Conditions for Placing Insurance with Surplus Lines Insurers.

Placement of insurance with surplus lines insurers pursuant to Section 31A-15-103 may only be done in accordance with either Section A, B or C below.

A. Insurance coverages and classes included on the export list may be placed with surplus lines insurers.

B. Insurance coverages and classes not included on the export list may be placed with surplus lines insurers only under the following conditions:

(1) A good faith effort must be made to place the insurance with admitted insurers the producer has reason to believe will consider writing the type of coverage or class of insurance involved. If that effort shows that the insurance cannot be obtained because of underwriting reasons or the insured requires specific terms and conditions of coverage which are unavailable through admitted insurers, the insurance may be placed with surplus lines insurers. Placement with the surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive as defined in Subsection 31A-19a-201(2).

(2) The inability to place the insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer.

(3) The producer must document his efforts to place the insurance with admitted insurers. The documentation must include the record of the efforts to place the insurance and a written explanation confirming the effort as being in good faith. The good faith effort documentation shall be maintained in the surplus lines producer's and the originating producer's files for at least three years from the inception date of coverage or renewal.

C. Substantial insureds may purchase insurance from surplus lines insurers pursuant to Section 31A-15-103 if each of the following conditions is met:

- (1) the insured procures the insurance for its risk exposures by use of an employee of the insured whose full time responsibilities and duties consist of purchasing insurance and risk management;
- (2) the insurance procured for property and casualty

coverages, excluding workers' compensation insurance, exceeds an annual aggregate premium of \$500,000; and

(3) the insured's risk manager and an officer of the company sign an affidavit confirming items (1) and (2). This affidavit shall be retained by the surplus lines producer and one copy shall be attached to the submission documentation required under R590-171-8.

D. All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.

R590-171-7. Conditions for Marketing Insurance with Surplus Lines Insurers.

A. Producers may not solicit business on behalf of a surplus lines insurer. However:

(1) Producers may advertise the availability of insurance products for the insurance coverages and classes included on the export list to potential insureds and other producers.

(2) Surplus lines producers may advertise their services and product lines to other producers.

(3) Such advertisements shall identify the fact that the insurance will be placed with a surplus lines insurer. The advertisements must not identify the insurer by name nor act as a solicitation on behalf of any surplus lines insurer. The advertisements shall not identify specific rates or specific policy provisions.

B. Once negotiations over the available terms and conditions for specific coverages begin, at least the following facts must be disclosed in writing to the potential insured:

(1) that the insurance will be placed through a surplus lines insurer and the name of the insurer;

(2) that the producer is not a producer of the potential insurer because surplus lines insurers are not permitted to appoint producers;

(3) that the surplus lines market is a specialty market that has limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

(4) that no protection is afforded under any Utah guaranty fund mechanism.

C. Subject to the general provisions of Section 31A-23a-501, a surplus lines producer may originate surplus lines insurance or accept applications for surplus lines insurance from any other producer duly licensed as to the kinds of insurance involved. The surplus lines producer may compensate the originating producer involved in the transaction.

D. Only that portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer. If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer. An explanation must be provided in the submission documentation outlined in R590-171-8.

R590-171-8. Reporting and Examination.

A. No later than 60 days after the effective date of a policy or a certificate of insurance that has been placed with a surplus lines insurer, the surplus lines producer must file a complete copy of the policy or certificate and justification for placement with a surplus lines insurer with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a).

B. Justification for placement with a surplus lines insurer shall:

(1) for insurance exposures placed pursuant to R590-171-6.A, consist of identification of the specific coverage or class on the export list; or

(2) for insurance exposures placed pursuant to R590-171-6.B, consist of a copy of the record of the effort to place with

admitted insurers required by R590-171-6.B(3); or

(3) for insurance placed pursuant to R590-171-6.C, consist of a copy of an affidavit signed by the insured; and

(4) if applicable, consist of the explanation required by R590-171-7.D; and

(5) consist of any other information or documentation pertinent to the surplus lines placement.

C. The Surplus Line Association shall provide submission forms to be used for complying with R590-171-8.B.

D. If the contract or certificate is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by R590-171-8B must be filed with the Surplus Lines Association of Utah.

E. If the examination performed by the Surplus Line Association determines that the placement of a policy or certificate of insurance with a surplus lines insurer is not in compliance with Section 31A-15-103(11)(a) or this rule, the Surplus Line Association shall take such corrective action as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.

R590-171-9. Rule Distribution.

The Surplus Line Association of Utah shall distribute a copy of this rule to every surplus lines producer and instruct all surplus lines producers as to its scope and operation.

R590-171-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-171-11. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule upon the effective date of this rule.

R590-171-12. Severability.

If a provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

September 28, 2009

Notice of Continuation May 27, 2010

31A-2-201

31A-15-103

31A-15-111

R590. Insurance, Administration.**R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.****R590-199-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(3) and 31A-4-115(8).

R590-199-2. Purpose.

This rule is drafted for the purposes of maintaining a health benefit plan market that is stable, fair, and efficient for individuals and small employers and ensuring and maintaining increased access for individuals and small employers to health coverage. It promotes an orderly process by which an insurer can elect to nonrenew health benefit plan coverages without unreasonable disruption to the health insurance market.

R590-199-3. Applicability and Scope.

This rule applies to accident and health insurers.

R590-199-4. Definitions.

(1) The definitions in Section 31A-30-103 apply to this rule.

(2) "Annual Renewal Date" means the annual anniversary of the date of the policy or plan, under which health insurance benefits are provided, was initially issued.

R590-199-5. Plan of Orderly Withdrawal.

(1) A covered carrier and each affiliate of a covered carrier that elects to nonrenew coverage under a health benefit plan in Utah must file a plan of orderly withdrawal with the Utah insurance commissioner explaining the process of nonrenewal. The plan must be filed with the Utah insurance commissioner at the time advance notice is given under Subsection 31A-30-107(3)(e) and 31A-30-107.1(3)(e) and must be accompanied by a \$50,000 withdrawal fee or proof of placement or assumption of all business to another carrier. This fee is to be made out to the Utah Comprehensive Health Insurance Pool. The plan of orderly withdrawal is to include the following information:

(a) name and telephone number of company representative to contact regarding the nonrenewal;

(b) list of all policy forms affected by the withdrawal;

(c) number of group or individual policies, or both, that are currently in force;

(d) number of covered lives, include insured, spouse and dependents, under individual health benefit plan policies;

(e) number of covered lives, include insured, spouse and dependents, under small employer health benefit plans;

(f) number of COBRA or state extension policies and the number of covered lives for each;

(g) copy of conversion plan and rates that will be offered in accordance with Section 31A-22-703;

(h) copy of notice required by Subsection 31A-30-107(1)(f)(ii). Such notice must inform the insured of their portability rights and responsibilities;

(i) service or coverage areas within the state, which indicates withdrawal areas;

(j) list of all types of all insurance coverages offered in Utah by line of business and the premium volume generated in the prior year;

(k) any reinsurance ceding arrangements relating to the health benefit plans being nonrenewed;

(l) information relating to any waiver provided under Subsection 31A-30-104(3)(a);

(m) list of all affiliated carriers as described in Subsection 31A-30-104(2);

(n) certification of compliance executed by the president of the company stating that the withdrawing company is in compliance with Sections 31A-30-101 through 31A-30-112 at the time the election to withdraw is filed;

(o) certification executed by the president of the company that its individual enrollment cap has been exceeded, if applicable;

(p) loss ratios for each form issued in Utah and the methodology by which the loss ratio was calculated, including a description of all assumptions made;

(q) certified actuarial analysis from a qualified actuary of the impact that the withdrawal or nonrenewal will have on the individual and small employer market in Utah;

(r) certified actuarial analysis from a qualified actuary of the impact that withdrawal or nonrenewal will have on the Utah Comprehensive Health Insurance Pool;

(s) actuarial certification from a qualified actuary certifying to the level of liability related to the policies;

(t) detailed explanation of all efforts made to place business that is to be nonrenewed with other carriers;

(u) any plans to nonrenew any other line of business in Utah in the future;

(v) copy of the certificate of authority of the company and all affiliates involved in the withdrawal; and

(w) demonstrate that all liabilities relating to the policies that will be nonrenewed are fully satisfied or adequately reserved.

(2) Submit two copies of the plan of orderly withdrawal, one copy to be filed and a second set to be returned to you, and a self addressed return envelope.

(3) If both the written notice and a complete plan of orderly withdrawal are not received, the partial submission will be returned and not considered to have been received by the department.

R590-199-6. Implementation of Withdrawal.

(1) A covered carrier and all its affiliates that elect to withdraw from the market or to nonrenew a health benefit plan issued to covered insureds must provide written notice of the decision to do so to all affected insureds and to the insurance commissioner in each state in which an affected insured resides.

(2) Each insured must be given at least 180-days notice prior to the nonrenewal date.

(3) The Utah insurance commissioner is to receive written notice of the decision to withdraw or nonrenew any health benefit plan at least three working days prior to the mailing of the notice to affected covered insureds.

(4) The carrier must include with the notice to the Utah insurance commissioner its certificate of authority which will be modified to prohibit the writing of business which the carrier has elected to nonrenew or withdraw from the market.

(5) The carrier is prohibited from writing new business in the individual and small employer health benefit plan market for a period of five-years from the date of notice to the Utah insurance commissioner.

(6) The covered carriers affiliates, as defined in Subsection 31A-30-104(2), may also be required to withdraw as determined by the commissioner.

(7) Each plan submitted to the commissioner must provide that the nonrenewal of any coverage under a health benefit plan will occur on the annual renewal date of each policy or plan. Nonrenewal can only occur on the annual renewal date.

R590-199-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: health insurance
March 14, 2003**

31A-2-201

Notice of Continuation May 20, 2010

31A-4-115
31A-30-106
31A-30-107

R590. Insurance, Administration.**R590-225. Submission of Property and Casualty Rate and Form Filings.****R590-225-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), and 31A-19a-203.

R590-225-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

- (a) property and casualty and title form filings required by Section 31A-21-201;
- (b) property and casualty and title rates, and supplementary information under Section 31A-19a-203;
- (c) service contract form filings required by Subsection 31A-6a-103(2)(a); and
- (d) bail bond form filings required by Sections 31A-35-607 and Rule R590-196.
- (e) guaranteed asset protection waiver filings required by 31A-6b-202(b) and 31A-6b-203.

(2) This rule applies to all lines of property and casualty insurance, including title insurance, bail bond, service contracts, and guaranteed asset protection waivers.

R590-225-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

- (a) Actual copies may be used or you may adapt them to your word processing system.
- (b) If adapted, the content, size, font, and format must be similar.
- (2) The following filing documents are hereby incorporated by reference and are available on the department's web site, <http://www.insurance.utah.gov>.
 - (a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, 2009;
 - (b) "NAIC Property and Casualty Transmittal Document (Instructions)", dated January 1, 2009;
 - (c) "NAIC Uniform Property and Casualty Coding Matrix", dated January 1, 2009;
 - (d) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated October 2003;
 - (e) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated October 2003.

R590-225-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

- (1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.
- (2) "Electronic Filing" means a:
 - (a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, or
 - (b) filing submitted via an email system.
- (3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.
- (4) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.
- (5) "Filer" means a person who submits a filing.
- (6) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.
- (7) "Letter of authorization" means a letter signed by an

officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(8) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(9) "Rejected" means a filing is:

- (a) not submitted in accordance with applicable laws and rules;
- (b) returned to the filer by the department with the reasons for rejection; and
- (c) not considered filed with the department.

(10) "Type of Insurance" means a specific line of property and casualty insurance including general liability, commercial property, workers compensation, automobile, homeowners, title, bail bond, service contracts, and guaranteed asset protection waivers.

(11) "Use And File" means a filing can be used, sold, or offered for sale if it is filed within a stated period of time after its initial use.

(12) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-225-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

- (a) is not considered filed with the department;
- (b) must be submitted as a new filing;
- (c) will not be reopened for purposes of resubmission.
- (5) A prior filing will not be researched to determine the purpose of the current filing.
- (6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

- (i) when submitted;
- (ii) as a result of a complaint;
- (iii) during a regulatory examination or investigation; or
- (iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

- (a) Filing corrections are considered informational.
- (b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.

(8) If responding to a Response to Filing Objection Letter or an Order to Prohibit Use, refer to section R590-225-12 for instructions.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-225-6. Filing Submission Requirements.

- (1) All filings must be submitted as an electronic filing.
- (a) All filers must use SERFF to submit a filing.
- (b) EXCEPTION: bail bond agencies, service contract providers, and guaranteed asset protection providers may choose to use email instead of SERFF to submit a filing.
- (2) A filing must be submitted by market type and type of insurance, not by annual statement line number.
- (3) A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description.
- (4) A filer may submit a filing for more than one insurer if all applicable companies are listed.
- (5) SERFF Filing.
- (a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description Section with the following information, presented in the order shown below.
- (i) Certification.
- (A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
- (B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".
- (C) A filing will be rejected if the certification is false, missing, or incomplete.
- (D) A certification that is false may subject the licensee to administrative action.
- (ii) Provide a description of the filing including:
- (A) the intent of the filing; and
- (B) the purpose of each document within the filing.
- (iii) Indicate if the filing:
- (A) is new;
- (B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;
- (C) includes forms for informational purposes; if so, provide the Utah Filed Date; or
- (D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.
- (iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.
- (b) Letter of Authorization.
- (i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.
- (ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.
- (c) Items being submitted for filing.
- (i) All forms must be attached to the Form Schedule tab.
- (ii) All rates and supplementary rating information must be attached to the Rate/Rule Schedule tab.
- (d) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.
- (6) A complete EMAIL filing consists of the following when submitted by a bail bond agent, a service contract provider, or a guaranteed asset protection provider:
- (a) The title of the EMAIL must display the company name only.
- (b) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in section R590-

225-3(2), must be properly completed.

(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

- (A) "NAIC Coding Matrix;"
- (B) "NAIC Instruction Sheet;" and
- (C) "Utah Property and Casualty Content Standards."
- (ii) Do not submit the documents described in (A), (B), and (C) with the filing.
- (c) Filing Description. Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the Filing Description with the following information, presented in the order shown below.
- (i) Certification.
- (A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
- (B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".
- (C) A filing will be rejected if the certification is false, missing, or incomplete.
- (D) A certification that is false may subject the licensee to administrative action.
- (ii) Provide a description of the filing including:
- (A) the intent of the filing; and
- (B) the purpose of each document within the filing.
- (iii) Indicate if the filing:
- (A) is new;
- (B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;
- (C) includes forms for informational purposes; if so, provide the Utah Filed Date; or
- (iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.
- (d) Letter of Authorization.
- (i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.
- (ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.
- (e) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and supplementary information.
- (f) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.
- R590-225-7. Procedures for Form Filings.**
- (1) Forms in general:
- (a) Forms are "File And Use" filings. EXCEPTION: service contracts, and guaranteed asset protection waivers are "File Before Use".
- (b) Each form must be identified by a unique form number. The form number may not be variable.
- (c) A form must be in final printed form or printer's proof format. A draft may not be submitted.
- (2) If you have authorized a Rate Service Organization (RSO) to make form filings on your behalf, no filing by you is required if you implement the filings as submitted by the RSO.
- (a) A filing is required if you delay the effective date, non-adopt or alter the filing in any way.
- (b) Your filing must be received by the department before the RSO effective date.
- (c) We do not require that you attach copies of the RSO's forms when you reference a filing.

(3) If you have NOT authorized an RSO to file forms on your behalf, you must include, in your filing a letter stating your intent to adopt any RSO forms for your use.

(a) Copies of the RSO forms are not required.

(b) Your filing must include a complete list of the RSO forms you intend to adopt by form number, title/name and filing identification number of the RSO.

(4) A "Me Too" filing, referencing a filing submitted by another insurer, bail bond agency, or service contract provider is not permitted.

(5) If a previously filed Utah amendatory endorsement will be used in connection with the form being filed, explain this in the Filing Description section of the transmittal form and include a copy with the filing.

(6) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal:

(a) only one copy of each form is required;

(b) If the name of each respective company or unique insurer logo is printed on each separate set of the form, then a separate form must be filed for each insurer.

(7) Since a form may be used once it is "Filed" and must be "Filed" before it can be used, sold or offered for sale, you do not need to re-file or notify the department if the implementation date of the original filing changes.

R590-225-8. Procedures for Rate and Supplementary Information Filings.

(1) Rates and supplementary information in general.

(a) Rates and supplementary information are "Use And File" filings. EXCEPTION: title and workers compensation rates and supplementary information are "File Before Use" filings.

(b) Service contract providers, bail bond agencies, and guaranteed asset protection providers are exempt from this section.

(2) If you have authorized a Rate Service Organization (RSO) to make a prospective loss cost, supplementary information filing, or both, on your behalf, no filing by you is required if you implement the filing as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt, or alter the filing in any way.

(b) Any such filing must be received by the department within 30 days of the effective date established by the RSO.

(c) We do not require that you attach copies of the RSO's manual pages when you reference an RSO filing.

(3) If you have NOT authorized an RSO to file the prospective loss cost, supplementary rating information, or both, on your behalf

(a) you must include in your filing a letter stating your intent to adopt the RSO prospective loss cost, supplementary rating information filing, or both.

(b) You must file copies of any manual pages as if they were your own and provide your actuarial justification.

(4) A "Me Too" filing, referencing a filing submitted by another licensee, is not permitted.

(5) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal and the supporting data and manual pages are identical for each insurer included in the filing, only one copy of the supporting data and manual pages are required to be submitted.

(6) Rate and supplementary information filings must be supported and justified by each insurer.

(a) Justification must include:

(i) submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates; and

(ii) a complete explanation as to the extent to which each factor has been used.

(b) Underwriting criteria are not required unless they

directly affect the rating of the policy.

(c) Underwriting criteria used to differentiate between rating tiers is required.

(7) When submitting a filing for any kind of rating plan, rating modification plan, or credit and debit plan, an insurer must include in the filing:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(c) A filing will be rejected as incomplete if it fails to specifically provide this information.

(8) Utah and countrywide statistical data for the latest three years available must be submitted with each filing.

(a) This data should include earned premiums, incurred losses, loss ratios, establishment of expense factors, and expected loss ratios.

(b) Calculations involved in establishing rates from loss experience are to be exhibited including the establishment of trend factors, loss development factors, etc.

(c) If any of the above information is not available, a detailed explanation of why must be provided with the filing.

(9) Rate deviation, prospective loss cost, and loss cost multiplier.

(a) In the past, a rate deviation filing was common.

(i) A rate deviation consisted of a modification, usually a percentage decrease or increase, to a RSO manual rate or supplementary information.

(ii) The justification was that an individual insurer could demonstrate experience, expense and profit factors different from the average experience, expense and profit contemplated in the RSO's manual rate.

(b) With the promulgation of a prospective loss cost, rate deviation ceased to exist.

(i) There are no longer manual rates from which to deviate.

(ii) Once an insurer has filed to implement the RSO prospective loss cost for a given line, company deviations previously filed became null and void.

(iii) A filing of a straight percentage deviation is no longer applicable.

(c) Loss cost multiplier.

(i) An individual insurer adjustment to the RSO prospective loss cost must be made as part of the calculation of the loss cost multiplier and must be included in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(ii) This form allows for the inclusion of an individual insurer modification of the RSO prospective loss cost.

(10) Procedures for Reference Filings to Advisory Prospective Loss Cost.

(a) An RSO does not usually file an advisory rate that contains provisions for expenses, other than loss adjustment expenses.

(i) An RSO develops and files with the commissioner a "Reference Filing" containing advisory prospective loss cost and supporting actuarial and statistical data.

(ii) Each insurer must individually determine the rates it will file and the effective date of any rate changes.

(b) If an insurer that is a member, subscriber or service purchaser of any RSO determines to use the prospective loss cost in an RSO Reference Filing in support of its own filing, the insurer must make a filing using the "Utah Insurer Loss Cost Multiplier Filing Forms."

(c) The insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost multiplier contained in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(d) An insurer may file a modification of the prospective loss cost in the RSO Reference Filing based on its own

anticipated experience.

(e) Actuarial justification is required for a modification, upwards or downwards, of the prospective loss cost in the Reference Filing.

(f) An insurer may request to have its loss cost adjustments remain on file and reference all subsequent RSO prospective loss cost Reference Filings.

(i) Upon receipt of subsequent RSO Reference Filings, the insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost adjustments contained in the "Utah Insurer Loss Cost Multiplier Filing Forms" on file with the commissioner, and will be effective on the effective date of the prospective loss cost.

(ii) The insurer need not file anything further with the commissioner.

(g) If the filer wants to have its filed loss cost adjustments remain on file with the commissioner, but intends to delay, modify, or not adopt a particular RSO's Reference Filing, the filer must make an appropriate filing with the commissioner.

(h) An insurer's filed loss cost adjustments will remain in effect until the filer withdraws them or files a revised "Utah Insurer Loss Cost Multiplier Filing Form."

(i) A filer may file such other information the filer deems relevant.

(j) If an insurer wishes to use minimum premiums, it must file the minimum premiums it proposes to use.

(11) Supplementary Rate Information.

(a) The RSO files with the commissioner RSO filings containing a revision of rules, relativities and supplementary rate information. These RSO filings include:

(i) policy-writing rules;

(ii) rating plans;

(iii) classification codes and descriptions; and

(iv) territory codes, descriptions, and rules, which include factors or relativities such as, increased limits factors, classification relativities or similar factors.

(b) These filings are made by the RSO on behalf of those insurers that have authorized the RSO to file rules, relativities and supplementary rating information on their behalf.

(c) An RSO may print and distribute a manual of rules, relativities and supplementary rating information.

(d) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions and effective date then the insurer does NOT file anything with the commissioner.

(e) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions as filed, BUT with a different effective date, then the insurer must notify the commissioner of the insurer's effective date within 30 days after the RSO's effective date.

(f) If an insurer has authorized an RSO to file on its behalf, but the insurer decides not to use the revision, then the insurer must notify the commissioner within 30-days after the RSO's effective date.

(g) If an insurer has authorized an RSO to file on its behalf, but the insurer decides to use the revision with modification, then within 30-days of the RSO's effective date the insurer must file the modification specifying the basis for the modification and the insurer's effective date.

(12) Consent-to-rate Filing.

(a) Subsection 31A-19a-203(6) allows an insurer to file a written application for a particular risk stating the insurer's reasons for using a higher rate than that otherwise applicable to a risk.

(b) The Filing Description must indicate that it is a consent-to-rate filing, show the filed rate, the proposed rate, and the reasons for the difference.

(13) Individual Risk Filing.

(a) R590-127, "Rate Filing Exemptions", provides for those circumstances when an Individual Risk filing is permitted.

(b) An individual risk filing must be filed with the commissioner.

(i) The filing shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, and premium development.

(ii) The Filing Description must indicate that it is an individual risk filing, and contain the underwriter's explanation for the filing.

(14) Information Regarding Dividend Plan.

(a) Sections 31A-19a-210 and 31A-21-310 allow for dividend distributions.

(b) A plan or schedule for the distribution of a dividend developed AFTER THE INCEPTION of a policy is NOT considered a rating plan and does not have to be filed according to the provisions of this rule.

(c) A plan or schedule for the distribution of a dividend applicable to an insurance policy FROM ITS INCEPTION are required to be filed pursuant to Section 31A-21-310.

(15) The Utah Insurance Code allows tiered rating plans within one insurer or insurer group with common ownership.

(a) A filing must show that the tiers are based on mutually exclusive underwriting rules, which are based on clear, objective criteria that would lead to a logical distinguishing of potential risk.

(b) A filing must provide supporting information that shows a clear distinction between the expected losses and expenses for each tier.

(c) If an insurer group is using a tiered rating structure, the group of insurers cannot all file the same loss cost multiplier and then file standard percentage deviations.

(i) A difference must be demonstrated in the loss cost multiplier formula, either as a modification of the RSO prospective loss cost or in the insurer expense factor.

(ii) An individual insurer adjustment or modification must be supported by actuarial data which establishes a reasonable standard for measuring probable insurer variations in historical or prospective experience, underwriting standards, expense and profit factors.

R590-225-9. Additional Procedures for Workers Compensation Rate Filings.

The following are additional procedures for workers' compensation rate filings:

(1) Rates and supplementary information must be filed 30 days before they can be used.

(2)(a) Each insurer must individually determine the rates it will file.

(b) Filed rates.

(i) An insurer's workers' compensation filed rates are the combination of the most current prospective loss cost filed by the designated rate service organization and the insurers loss cost adjustment, known as the loss cost multiplier (LCM), as calculated and filed using the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Form."

(ii) Each insurer must implement the designated rate service organization's current prospective loss cost on the effective date assigned by the designated rate service organization. INSURERS MAY NOT DEFER NOR DELAY ADOPTION.

(iii) An insurer's filed loss cost multiplier will remain in effect until the insurer withdraws it or files a new loss cost multiplier.

(iv) Upon receipt of subsequent designated rate service organization reference filings, the insurer's filed rates are the combination of the designated RSO's prospective loss cost and the loss cost multiplier contained in the insurer's most current "Utah Loss Cost Multiplier Filing Form" on file with the department.

(3) An insurer may file a modification to the designated

rate service organization prospective loss cost in the subject reference filing based on its own anticipated experience. Supporting documentation will be required for any modifications, upwards or downwards, of the designated rate service organization prospective loss cost.

(4) An insurer may vary expense loads by individual classification or grouping. An insurer may use variable or fixed expense loads or a combination of these to establish its expense loadings. However, an insurer is required to file data in accordance with the uniform statistical plan filed by the designated rate service organization.

(5) When submitting a filing for a workers compensation rating plan, a rating modification plan, or a credit and debit plan, an insurer must include in the filing the following or it will be rejected as incomplete:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(6) To the extent that an insurer's rates are determined solely by applying its loss cost multiplier, as presented in the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Forms" to the prospective loss cost contained in a designated rate service organization reference filing and printed in the designated rate service organization's rating manual, the insurer need not develop or file its rate pages with the commissioner. If an insurer chooses to print and distribute rate pages for its own use, based solely upon the application of its filed loss cost multiplier, the insurer need not file those pages with the insurance commissioner.

R590-225-10. Additional Procedures for Title Rate Filings.

(1) Title rate and a supplementary information filing are "File Before Use" filings. Rates and supplementary information shall be filed with the commissioner 30 days prior to use.

(2) Each change or amendment to any schedule of rates shall state the effective date of the change or amendment, which may not be less than 30 days after the date of filing. Any change or amendment remains in force for a period of at least 90 days from its effective date.

(3) Supplementary information and rate filings must be supported and justified by each insurer. Justification must include submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates along with a complete explanation as to the extent to which each factor has been used.

(4) Rates that vary by risk classification such as extended coverage or standard coverage, and all discount factors, such as refinance, subdivision, or construction for purpose of resale discounts, must be supported by differences in expected losses or expenses.

(5) No rate may be filed or used which would require the title insurer or any title agency or producer to operate at less than the cost of doing business or adequately underwriting the title insurance policies.

R590-225-11. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

- (a) type of insurance;
- (b) date of filing; and
- (c) Submission method, SERFF, or email; and
- (d) tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a

status request prior to 60 days.

R590-225-12. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) for filings submitted in SERFF, attach the documents in Subsections R590-225-12(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-13. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-225-15. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: property casualty insurance filing

May 26, 2010

Notice of Continuation March 12, 2009

31A-2-201

31A-2-201.1

31A-2-202

31A-19a-203

R590. Insurance Administration.**R590-231. Workers' Compensation Market of Last Resort.****R590-231-1. Authority.**

This rule is promulgated pursuant to the following statutes:

- (1) 31A-19a-404, rulemaking authority for the recording and reporting of statistical data and experience rating data;
- (2) 31A-20-103, rulemaking authority to define lines and classes of insurance;
- (3) 31A-22-1010, rulemaking authority for reporting requirements for workers' compensation deductible policies; and
- (4) 31A-2-201, rulemaking authority to implement the provision of Title 31A.

R590-231-2. Findings and Interpretation.

(1) The commissioner finds that the legislature intended that the Workers' Compensation Fund created under Title 31A, Chapter 33, was to provide workers' compensation insurance for Utah employers who are not able to obtain such insurance in the voluntary marketplace.

(2) Based upon this finding, the commissioner interprets Section 31A-22-1001 to mean that the Workers' Compensation Fund, created under Title 31A, Chapter 33, is the insurer that provides workers' compensation insurance for the market of last resort in Utah.

R590-231-3. Purpose and Scope.

(1) The purpose of this rule, regarding the workers' compensation market of last resort, is to:

- (a) define the workers' compensation market of last resort;
- (b) provide eligibility criteria;
- (c) provide requirements for designation of existing insured employers; and
- (d) provide reporting requirements to the department and the designated rate service organization.

(2) This rule applies to the insurer for the market of last resort.

R590-231-4. Definitions.

(1) "Insurer for the market of last resort" means the Workers' Compensation Fund.

(2) "Market of Last Resort" means the workers' compensation class of risk that cannot be placed with a voluntary workers' compensation insurer because of certain underwriting restrictions or class codes.

(3) "Voluntary workers' compensation insurer" means an admitted workers' compensation insurer actively seeking workers' compensation business in Utah, including the Workers' Compensation Fund.

R590-231-5. Eligibility.

(1) To be eligible for the workers' compensation market of last resort, an employer must meet the underwriting and rating criteria established by the insurer for the market of last resort.

(2) An employer being insured by the insurer for the market of last resort remains eligible for the market of last resort until the employer obtains workers' compensation insurance from a voluntary workers' compensation insurer.

R590-231-6. Underwriting and Rating.

(1) The insurer for the market of last resort shall file separate underwriting and rating criteria for the market of last resort or a separate rating plan for the market of last resort.

(2) Underwriting criteria for eligibility in the market of last resort shall include:

- (a) premium size;
- (b) class code and risk characteristics; and
- (c) loss and payroll experience.

(3) Policy files for employers eligible for the market of last resort must include the underwriting criteria or follow

underwriting protocols used for placement in the market of last resort.

R590-231-7. Designation and Reporting.

(1) Because the Workers' Compensation Fund is a voluntary workers' compensation insurer, and the insurer for the market of last resort, the Workers' Compensation Fund shall:

(a) Designate its existing insured employers as insured in the voluntary workers' compensation market or in the market of last resort; and

(b) Such designation can be done:

- (i) immediately; or
- (ii) as each employer renews; or
- (iii) at the time a new application is made for workers' compensation coverage.

(2) The insurer for the market of last resort shall report its data, including market of last resort data to the designated rate service organization. Such reporting shall be timely and consistent with the designated rate service organization's reporting requirements for all workers' compensation insurance carriers operating in Utah.

(3) Upon request, the insurer for the market of last resort shall make available to the Insurance Department, information about the market of last resort. Requested information may include the market of last resort data reported to the designated rate service organization.

R590-231-8. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date of the rule.

R590-231-9. Severability.

If any provision or clause 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 shall not be affected.

KEY: workers' compensation insurance**May 20, 2005****Notice of Continuation May 4, 2010****31A-2-201****31A-19a-404****31A-20-103****31A-22-1010**

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.**R606-3. Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies.****R606-3-1. Authority.**

This rule is established pursuant to Section 34A-5-104.

R606-3-2. Procedures and Prohibitions.

A. In order to comply with the provisions of the Utah Antidiscrimination Act relating to prohibited employment practices, a contractor must do the following:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or disability.

2. In all solicitations or advertisements for employees, the contractor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, national origin, or disability.

3. The contractor will send to each labor union or workers' representative notices stating the contractor's responsibilities under the Act.

4. The contractor will furnish such information and reports as requested by the Division for the purpose of determining compliance with the Act.

5. The contractor will include the provisions of subsections 1-4 above in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor unless exempted by law.

B. Failure of the contractor to comply with the Act or the rules shall be deemed a breach of contract and the contract may be canceled, terminated, or suspended in whole or in part.

**KEY: discrimination, contractors, construction contracts
1990 34A-5-104 et seq.
Notice of Continuation May 28, 2010**

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.**R606-4. Advertising.****R606-4-1. Authority.**

This rule is established pursuant to Section 34A-5-104.

R606-4-2. Procedures and Prohibitions.

A. It is a violation of the Utah Antidiscrimination Act and of Title VII of the Civil Rights Act of 1964 for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex.

B. An exception to R606-4-2.A can be allowed based upon bona fide occupational qualification requirements. "Male" or "Female" designations, or readily understood abbreviations such as "M" or "F", may be used to indicate such preferential exception.

C. The Commission intends to review the operation of this guideline in the light of experience to ensure that male and female classifications in help-wanted advertising do not operate to limit employment opportunity.

KEY: discrimination, advertising, employment
1990 34A-5-101 et seq.
Notice of Continuation May 28, 2010

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.**R606-5. Employment Agencies.****R606-5-1. Authority.**

This rule is established pursuant to Section 34A-5-104.

R606-5-2. Procedures and Prohibitions.

A. An employment agency undertaking to fill a job order containing a specification regarding race, color, national origin, sex, age, religion, or disability will share responsibility with the employer placing the job order if it is determined that the specification was not based upon a bona fide occupational qualification.

B. An exception to R606-5-2.A can be allowed in that an application form may ask "Male", "Female", or "Mr., Mrs., Miss" provided that the inquiry is made in good faith for a nondiscriminatory purpose and is based upon a bona fide occupational qualification.

KEY: discrimination, employment agencies, employment 1990 34A-5-104 et seq.
Notice of Continuation May 28, 2010

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.**R606-6. Regulation of Practice and Procedure on Employer Reports and Records.****R606-6-1. Authority.**

This rule is established pursuant to Section 34A-5-104.

R606-6-2. Procedures and Prohibitions.

A. Employers subject to the jurisdiction of the U.S. Equal Employment Opportunity Commission shall not be required to furnish information to the Division which is a duplication of that filed on Standard Form 100, Employer Information EEO-1 Report. The Division reserves the right to require reports about the employment practices of individual employers, or groups of employers, whenever such information has not been furnished to the Equal Employment Opportunity Commission.

B. The provision respecting confidentiality of information contained in Section 709(e) of the U.S. Civil Rights Act of 1964 shall be observed by Commission and all Commission staff.

C. Any personnel or employment record made or kept by an employer (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the employer for a period of six months from the date of the making of the record and the personnel action involved, whichever occurs later. In case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of six months from the date of termination. Where a complaint of discrimination has been filed, the respondent employer shall preserve all personnel records relevant to the complaint and to the charging party until final disposition of the complaint. The term "personnel records relevant to the complaint", for example, would include personnel or employment records relating to the charging party and to all other employees holding positions similar to that held or sought by the charging party and application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the charging party applied and was rejected. The date of "final disposition of the complaint" means the date of the final agency action or the end of the appeals process.

D. If a person fails to make, keep, or preserve records or make reports in accordance with the Act and rules, the district court for the county in which such person is found, resides, or has his principal place of business, upon application of the Commission, may issue an order requiring compliance.

**KEY: discrimination, personnel files
1990**

34A-5-101 et seq.

Notice of Continuation May 28, 2010

R614. Labor Commission, Occupational Safety and Health.**R614-1. General Provisions.****R614-1-1. Authority.**

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronym of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal

representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political

subdivisions.

W. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2009, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2009, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2009, is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2009, edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;
2. Remodeling, alteration and repair;
3. Decorating and painting;
4. Demolition; and
5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating

physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and

may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

- (1) Responsible supervision (superintendent or equivalent)
 - (2) Doctor
 - (3) Hospital
 - (4) Ambulance
 - (5) Fire Department
 - (6) Sheriff or Police
10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee

will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational

safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety

and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the

Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health

Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such

notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the

Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the

notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;
(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A., E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII

of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee

interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah

Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and

development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, *Meek v. United States*, F. 2d 679 (6th Cir., 1943); *Bowe v. Judson C. Burnes*, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, *U.S. v. Silk*, 331 U.S. 704 (1947); *Rutherford Food Corporation v. McComb*, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, *NLRB v. Lamar Creamery*, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, *NLRB v. Dixie Motor Coach Corp.*, 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken

place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, *Mitchell v. Goodyear Tire and Rubber Co.*, 278 F. 2d 562 (8th Cir., 1960); *Goldberg v. Bama Manufacturing*, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See *Cong. Rec.*, vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification or revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected

against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances,

e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., *Boy's Market, Inc. v. Retail Clerks*, 398 U.S. 235 (1970); *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965); *Carey v. Westinghouse Electric Co.*, 375 U.S. 261 (1964); *Collier Insulated Wire*, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, *Rios v. Reynolds Metals Co.*, F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972); *Newman v. Avco Corp.*, 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information.

Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall

be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by

the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the

employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it be returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the

examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the

UOSH Administrator which shall be made available to the public. This report shall discuss:

- a. The number of written access orders approved and a summary of the purposes for access;
- b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and
- c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

- a. Needs the requested information in a personally identifiable form for a substantial public health purpose;
- b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;
- c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and
- d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

- a. The National Institute for Occupational Safety and Health (NIOSH).
- b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical

Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved

and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may

recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested; or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the

employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following:

- a. The existence, location, and availability of any records covered by this rule;
- b. The person responsible for maintaining and providing access to records; and
- c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

- a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or
- b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize

(individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose:, but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity

information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for \$13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO for \$14.00 (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety

May 22, 2008

Notice of Continuation November 2, 2007

34A-6

R628. Money Management Council, Administration.

R628-15. Certification as an Investment Adviser.

R628-15-1. Authority.

This rule is issued pursuant to Sections 51-7-3(3), 51-7-18(2)(b)(vi) and (vii), and 51-7-11.5.

R628-15-2. Scope.

This rule establishes the criteria applicable to all investment advisers and investment adviser representatives for certification by the Director as eligible to provide advisory services to public treasurers under the State Money Management Act (the "Act"). It further establishes the application contents and procedures, and the criteria and the procedures for denial, suspension, termination and reinstatement of certification.

R628-15-3. Purpose.

This rule establishes a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment of public funds by investment advisers would expose said public funds to undue risk.

R628-15-4. Definitions.

A. The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

1. "Certified investment adviser";
2. "Council";
3. "Director";
4. "Public treasurer";
5. "Investment adviser representative"; and
6. "Certified dealer".

B. For purposes of this rule the following terms are defined:

1. "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.
2. "Realized rate of return" means yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.
3. "Soft dollar" means the value of research services and other benefits, whether tangible or intangible, provided to a certified investment adviser in exchange for the certified investment adviser's business.

R628-15-5. General Rule.

Before an investment adviser or investment adviser representative provides investment advisory services to any public treasurer, the investment adviser or investment adviser representative must submit and receive approval of an application to the Division, pay to the Division a non-refundable fee as described in Section 51-7-18.4(2), and become a Certified investment adviser or Investment adviser representative under the Act.

R628-15-6. Criteria for Certification of an Investment Adviser.

To be certified by the Director as a Certified investment adviser or Investment adviser representative under the Act, an investment adviser or investment adviser representative shall:

- A. Submit an application to the Division on Form 628-15 clearly designating:
 - (1) the investment adviser;
 - (2) its designated official as defined in R164-4-2 of the Division; and
 - (3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

B. Provide written evidence of insurance coverage as follows:

- (1) fidelity coverage based on the following schedule:

TABLE

Utah Public funds under management	Percent for Bond
\$0 to \$25,000,000	10% but not less than \$1,000,000
\$25,000,001 to \$50,000,000	8% but not less than \$2,500,000
\$50,000,001 to \$100,000,000	7% but not less than \$4,000,000
\$100,000,001 to \$500,000,000	5% but not less than \$7,000,000
\$500,000,001 to \$1.250 billion	4% but not less than \$25,000,000
\$1,250,000,001 and higher	Not less than \$50,000,000

- (2) errors and omissions coverage equal to five percent (5%) of Utah public funds under management, but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

C. Provide to the Division at the time of application or renewal of application, its most recent annual audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles in accordance with R628-15-8A.

D. Pay to the Division the non-refundable fee described in Section 51-7-18.4(2).

E. Have a current Certificate of Good Standing dated within 30 days of application from the state in which the applicant is incorporated or organized.

F. Have net worth as of its most recent fiscal year-end of not less than \$150,000 documented by the financial statements audited according to Subsection R628-15-6(C).

G. Allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court. No agreement, contract, or other document that the applicant requires or intends to require to be signed by the public treasurer to establish an investment advisory relationship shall require or propose to require that any dispute between the applicant and the public treasurer must be submitted to arbitration.

H. Agree to the jurisdiction of the Courts of the State of Utah and applicability of Utah law, where relevant, for litigation of any dispute arising out of transactions between the applicant and the public treasurer.

I. All Investment adviser representatives who have any contact with a public treasurer or its account, must sign and have notarized a statement that the representative:

- (1) is familiar with the authorized investments as set forth in the Act and the rules of the Council;
- (2) is familiar with the investment objectives of the public treasurer, as set forth in Section 51-7-17(2);
- (3) acknowledges, understands, and agrees that all investment transactions conducted for the benefit of the public treasurer must fully comply with all requirements set forth in Section 51-7-7 and that the Certified investment adviser and any Investment adviser representative is prohibited from receiving custody of any public funds or investment securities at any time.

R628-15-7. Certification.

A. The initial application for certification must be received on or before the last day of the month for approval at the following month's Council meeting.

B. All certifications shall be effective upon acceptance by

the Council.

C. All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed.

R628-15-8. Renewal of Application.

A. Certified investment advisers shall apply annually, on or before April 30 of each year, for certification to be effective July 1 of each year.

B. The application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The application must be accompanied by an annual certification fee as described in Section 51-7-18.4(2).

D. A Certified investment adviser whose certification has expired as of June 30 may not function as a Certified investment adviser until the investment adviser's certification is renewed.

R628-15-9. Post Certification Requirements.

A. Certified investment advisers shall notify the Division of any changes to any items or information contained in the original application within 30 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

B. Certified investment advisers shall maintain a current application on Form 628-15 with the Division throughout the term of any agreement or contract with any public treasurer. Federal covered advisers shall maintain registration as an investment adviser under the Investment Advisers Act of 1940 throughout the term of any agreement or contract with any public treasurer.

C. Certified investment advisers shall provide and maintain written evidence of insurance coverage as described in R628-15-6(B).

D. Certified investment advisers shall provide to the public treasurer the SEC Form ADV Part II prior to contract execution.

E. Certified investment advisers shall file annual audited financial statements with all public treasurers with whom they are doing business.

F. Certified investment advisers shall fully disclose all conflicts of interest and all economic interests in certified dealers and other affiliates, consultants and experts used by the Investment adviser in providing investment advisory services.

G. Certified investment advisers shall act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

H. Certified investment advisers shall exercise good faith in allocating transactions to certified dealers in the best interest of the account and in overseeing the completion of transactions and performance of certified dealers used by the Investment adviser in connection with investment advisory services.

I. Certified investment advisers shall fully disclose to the public treasurer any self-dealing with subsidiaries, affiliates or partners of the Investment adviser and any soft dollar benefits to the Investment adviser for transactions placed on behalf of the public treasurer.

J. Certified investment advisers shall fully and completely disclose to all public treasurers with whom they do business the basis for calculation of fees, whether and how fees may be adjusted during the term of any agreement, and any other costs chargeable to the account. If performance-based fees are proposed, the disclosure shall include a clear explanation of the amount of the fee at specific levels of performance and how prior losses are handled in calculation of the performance-based fee.

K. Certified investment advisers shall not assign any contract or agreement with a public treasurer without the written consent of the public treasurer.

L. Certified investment advisers shall provide immediate written notification to any public treasurer to whom advisory services are provided and to the Division upon conviction of any crime involving breach of trust or fiduciary duty or securities law violations.

M. Not less than once each calendar quarter and as often as requested by the public treasurer, Certified investment advisers shall timely deliver to the public treasurer:

(1) copies of all trade confirmations for transactions in the account;

(2) a summary of all transactions completed during the reporting period;

(3) a listing of all securities in the portfolio at the end of each reporting period, the market value and cost of each security, and the credit rating of each security;

(4) performance reports for each reporting period showing the total return on the portfolio as well as the realized rate of return, when applicable, and the net return after calculation of all fees and charges permitted by the agreement; and

(5) a statistical analysis showing the portfolio's weighted average maturity and duration, if applicable, as of the end of each reporting period.

R628-15-10. Notification of Certification.

The Director shall provide a list of Certified investment advisers and Investment adviser representatives to the Council at least semiannually. The Council shall mail this list to each public treasurer.

R628-15-11. Grounds for Denial, Suspension or Termination of Status as a Certified investment adviser.

Any of the following constitutes grounds for denial, suspension, or termination of status as a Certified investment adviser:

A. Denial, suspension or termination of the Certified investment adviser's license by the Division.

B. Failure to maintain a license with the Division by the firm or any of its Investment adviser representatives conducting investment transactions with a public treasurer.

C. Failure to maintain the required minimum net worth and the required bond.

D. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

E. Failure to pay the annual certification fee.

F. Making any false statement or filing any false report with the Division.

G. Failure to comply with any requirement of section R628-15-9.

H. Engaging in any material act in negligent or willful violation of the Act or Rules of the Council.

I. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

J. Engaging in a dishonest or unethical practice. "Dishonest or unethical practice" includes but is not limited to those acts and practices enumerated in Rule R164-6-1g.

K. Being the subject of:

(1) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state; or

(2) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission

denying or revoking license as an investment adviser, or investment adviser representative or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order.

R628-15-12. Procedures for Denial, Suspension, or Termination and Reinstatement of Status.

A. Where it appears to the Division or to the Council that grounds may exist to deny, suspend, or terminate status as a Certified investment adviser, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 4, Title 63G ("UAPA").

B. All proceedings to suspend a Certified investment adviser or to terminate status as a certified investment adviser are designated as informal proceedings under ("UAPA").

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. After the close of the hearing, other members of the Council may make recommendations to the hearing officer.

D. The Notice of Agency Action as set forth under UAPA, or any petition filed in connection with it, shall include a statement of the grounds for suspension or termination, and the remedies required to cure the violation.

E. A Certified investment adviser and its Investment adviser representative who has received a Notice of Agency Action alleging violations of the Act or these rules, may continue, in the discretion of the public treasurer, to conduct investment transactions with the public treasurer until the violations asserted by the Money Management Council in the Notice of Agency Action becomes subject to a written order of the Council or Agency against the adviser or adviser representative, or until the Council enters an emergency order indicating that public funds will be jeopardized by continuing investment transactions with the adviser or adviser representative.

F. The Council may issue an emergency order to cease and desist operations or specified actions with respect to public treasurers or public funds. Further, the Council may issue an emergency suspension of certification if the Council determines that public funds will be jeopardized by continuing investment transactions or other specified actions with the adviser or adviser representative.

G. Within ten business days after the conclusion of a hearing on an emergency order, the Council shall lift this prohibition upon a finding that the Certified investment adviser and its investment adviser representative may maintain certification.

KEY: cash management, public investments, securities regulation, investment advisers

December 27, 2007

Notice of Continuation May 5, 2010

51-7-3(3)

51-7-18(2)(b)(vi)

51-7-18(2)(b)(vii)

51-7-11.5(2)(b)

51-7-11.5(2)©

R655. Natural Resources, Water Rights.**R655-2. Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988.****R655-2-1. General Provisions.**

1.1 Procedure Governed. These rules shall govern all hearings which are held by the State Engineer on matters within his jurisdiction for all adjudicative proceedings commenced prior to January 1, 1988. Adjudicative proceedings commenced on and after January 1, 1988, are governed by R655-6 of these rules.

1.2 Definitions.

(a) "Division" means Division of Water Rights.
 (b) "State Engineer" is the Administrator of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(c) "Staff" means the Division of Water Rights staff.

(d) "Hearing officer" is the individual conducting a hearing which is provided for in these rules and will be either the State Engineer or a designated member of his staff.

(e) "Application" means any application which has been filed pursuant to Title 73, Chapters 1 through 3, and shall include -- but not be limited to -- applications to appropriate, change applications, requests for extension of time, exchange applications, segregation applications, applications to resume the use of water, and applications for stream channel changes. The rules governing the filing and perfecting of these documents are specified in said Chapters, and the following rules govern only the hearing procedures for those applications which have been properly filed and have proceeded to the point that they are ready for hearing.

(f) "Applicant" is a person applying for an application.

(g) "Petitioner" is any person, other than the applicant, seeking relief from the State Engineer where the relief sought falls within the jurisdiction of the State Engineer's statutory duties and responsibilities.

(h) "Protestant" means a person who protests an application before the State Engineer.

(i) "Person" means any governmental subdivision or agency, individual, corporation, partnership or association.

(j) "Proceeding" shall include -- but not be limited to -- hearings, petitions, orders to show cause, and formal investigations made by the State Engineer.

(k) "Party" means each person named or admitted as a party in a proceedings before the State Engineer.

(l) "Water user" means any person using water and subject to the regulatory authority of the State Engineer.

1.3 Liberal Construction. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the State Engineer.

1.4 Deviation from Rules. During emergency situations where it is essential to restore or establish water for the preservation of life or critical crops, the State Engineer may permit a deviation from these rules except where precluded by statute.

1.5 Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor State holiday. For good cause shown, the State Engineer may extend or waive any time limit prescribed or allowed by these rules.

1.6 Notice. The State Engineer shall give written notice of hearings to all persons who have become parties to a proceeding, by regular mail at least ten days prior to the hearing.

R655-2-2. Parties.

2.1 Generally. Parties to a proceeding before the State Engineer shall be:

(a) Persons who have a statutory right to be a party;

(b) Persons who may become a party when they have established to the satisfaction of the State Engineer that they have a substantial interest in the subject matter of the proceeding and that their intervention will not unduly broaden the issues.

2.2 Rights of Parties. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R655-2-3. Intervention.

3.1 Order Granting Leave to Intervene Required. Persons desiring to intervene in a proceeding shall obtain permission from the State Engineer granting leave to intervene before being allowed to participate. Permission shall be requested by means of a petition in the following manner, provided that for good cause shown leave to intervene may be requested orally at the hearing.

(a) Content of Petition. Petitions for leave to intervene must be in writing and must identify the proceeding by water right number, if known. The petition must contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding and the manner in which the proceeding will affect his interests.

(b) When Petition Must be Filed. A petition for leave to intervene must be filed with the State Engineer at least five days prior to the date set for the hearing.

(c) Granting of Petition. If a petition for leave to intervene shows a direct and substantial interest in the subject matter of the proceeding and does not unduly broaden the issues, the State Engineer may grant leave to intervene.

R655-2-4. Pleadings.

4.1 Pleadings before the State Engineer for administrative hearings shall consist of:

(a) Applications.

For purposes of a hearing before the State Engineer, applications which have been filed with the State Engineer in accordance with the provisions of Title 73, Chapters 1 through 3, and which have been protested, shall be deemed pleadings for purposes of the administrative hearing procedure provided for in these rules.

(b) Formal Protests.

Formal protests shall consist of those protests which have been filed with the State Engineer in objection to the granting of an application. The provisions for filing formal protests and the time within which they must be filed is provided in Section 73-3-7. The formal protest shall set forth clearly and concisely the grounds for the protest. Two or more grounds of protest concerning the same application may be included in one formal protest, but should be numbered and stated separately. Two or more protestants may join in one formal protest if their respective protests are against the same application and deal substantially with the same issue.

(c) Informal Protests.

Informal protests may be made by a letter or other writing, and no particular form is required. The writing must clearly state the matters complained of and must identify the party complained against and must be signed by the protestant or his attorney and show the address of protestant or his attorney.

Informal protests may be handled by the State Engineer by informal conference, correspondence, or otherwise with the parties affected in an endeavor to bring about adjustment of the protest without a formal hearing.

(d) Orders to Show Cause or Other Notice.

Pleadings before the State Engineer shall also include

Orders to Show Cause or other notices used by the State Engineer to initiate a hearing on his own motion.

(e) Petitions.

All pleadings other than applications requesting affirmative relief, including requests to intervene or for re-hearing, shall be entitled "petitions". A petition shall set forth clearly and concisely the basis and grounds for the petition and the relief requested.

(f) Title and Content of Pleadings.

Applications and other similar documents must only be filed upon the forms provided by the State Engineer. All other pleadings filed with the State Engineer should include the water right number as it appears in the State Engineer's office, if the water right which is the subject matter of the pleading has been assigned a number by the State Engineer. The pleading should also identify the name and address of the water user against whom the protest is directed.

If the water right involved in the pleading has not been assigned a water right number by the State Engineer, then the protestant or petitioner should identify the water right involved by other means -- the name and address of the water user, the water source, nature and location of the use, and other information as will aid in the identification of the water right.

Protests and petitions should be filed on legal-sized paper, type-written and double-spaced, but may be submitted in hand-written form. Protests and petitions should identify the water right by number and should contain a clear, concise statement of the matter relied upon as the basis for the pleading, together with an appropriate request for relief when relief is sought.

(g) Signing of Pleadings.

Pleadings shall be signed by the party or by the party's attorney or other authorized representative, and shall show the signer's address. The signature shall be deemed to be a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, the statements are true.

(h) Amendments to Pleadings.

The State Engineer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R655-2-5. Filing and Service.

5.1 Filing of Pleadings. Applications and protests shall be filed in accordance with the applicable statutory provisions. Petitions shall be filed with the State Engineer as specified in these rules.

5.2 Service. The State Engineer, upon receipt of a protest or petition, shall mail copies to those parties against whom relief is sought.

5.3 Service on Attorney. When any party has appeared by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party he represents.

5.4 Time for Filing. Protests and other documents which are governed by statute shall be filed in accordance with the time specified in the statute. Other pleadings which are provided for in these rules shall be filed within the time specified.

R655-2-6. Appearances and Representation.

6.1 Taking Appearances. Parties shall enter their appearances at the beginning of a hearing or at a time designated by the State Engineer by giving their names and addresses and stating their positions or interests in the proceeding.

6.2 Representation of Parties.

(a) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or

governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(b) Any party may be represented by an attorney at law.

R655-2-7. Pre-Hearing Procedure.

The State Engineer may, upon written notice to all parties or record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement.

R655-2-8. Hearings.

8.1 Initiation of Formal Hearing in Contested Cases.

(a) By the State Engineer. The State Engineer may initiate a formal hearing upon his own motion to determine matters within his authority. If the hearing is directed toward an applicant or water user, the State Engineer shall serve on that person an order to show cause or other notice or order suitable to the purposes of the hearing which shall set forth in ordinary and concise language the acts or omissions with which the person is charged, or the issues to be determined at the hearing. The notice or order shall specify the statutes and rules involved in the proceeding.

(b) By Other Persons. A formal hearing may be initiated by other persons by filing with the State Engineer a formal protest or petition. Upon the filing of a formal protest or petition which is directed toward an applicant or water user, the State Engineer shall serve a copy of the formal protest or petition upon the applicant or water user, except as provided in the following sub-paragraphs (c) and (d) of this rule.

(c) Dismissal of Formal Protest or Petition. If it appears to the State Engineer upon the filing of a formal protest or petition that the matters alleged in the formal protest or petition are not within his jurisdiction or regulatory powers, the State Engineer in his discretion need not serve a copy of the formal protest or petition on the applicant or water user, but shall serve a notice on the protestant or petitioner which shall state the reasons why the formal protest or petition has not been served, and shall set a time at which the protestant or petitioner may appear before the State Engineer or submit a written memorandum setting forth reasons why the State Engineer has jurisdiction and authority to resolve the matter. Following appearance or submission of memorandum, the State Engineer may proceed to serve the formal protest or petition on the applicant or water user, or may -- upon his own motion -- dismiss the formal protest or petition if he concludes that he does not have jurisdiction over or the authority to resolve the matter. The State Engineer shall mail a written notice to the protestant or petitioner of his action, and, if he dismisses the formal protest or petition, the notice shall contain a statement of the reasons for his decision. If the State Engineer proceeds to serve the protestant or petitioner, no action taken pursuant to this paragraph shall preclude the applicant or water user from challenging the jurisdiction and authority of the State Engineer over the matter in issue.

(d) Protest or Petition Insufficient. If a formal protest or petition filed with the State Engineer does not contain sufficient information in the opinion of the State Engineer to adequately apprise the applicant or water user of the matters which are complained of and to enable the applicant or water user to prepare his defense, the State Engineer may require the protestant or petitioner to furnish additional information, or to file a new protest or petition before the formal protest or petition is served on the applicant or water user.

8.2 Setting of Hearing. Upon the filing of a formal protest or petition which does not require a responsive pleading, or when the State Engineer initiates a proceeding upon his own

motion and no responsive pleading is required, the State Engineer shall set a time and place for hearing. No hearing shall take place within the ten-day period immediately following the filing of the formal protest or petition unless the parties consent to a shorter period of time. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

8.3 Failure to Appear. When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the State Engineer may dismiss or continue the matter, or may proceed to hear the matter in the absence of the defaulting party.

8.4 Continuance. If application is made to the State Engineer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the State Engineer may grant a continuance of the hearing.

8.5 Hearings. All hearings held by the State Engineer shall be open to the public.

8.6 Testimony. At a hearing, the State Engineer or his hearing officer shall accept oral or written testimony from any party. Further, the hearing officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings before the State Engineer may be under oath.

8.7 Order of Presentation of Evidence. Unless otherwise directed by the State Engineer at a hearing, the presentation of evidence shall be as follows:

(a) Upon applications and other documents filed in connection with the appropriation and use of water:

1. applicant;
2. protestants.

(b) Upon petitions or objections concerning the exercise of a water right:

1. protestants;
2. water user whose use is being protested.

(c) Upon complaints by the State Engineer and orders to show cause --

1. Division of Water Rights staff;
2. party against whom the action is being taken.

During any of the hearings specified above, a party may offer rebuttal evidence.

8.8 Rules of Evidence. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in a judicial proceeding. The hearing officer shall admit all relevant and material evidence, except evidence which is unduly repetitious, even though evidence may be inadmissible under rules of evidence in judicial proceedings. The weight to be given to evidence shall be determined by the State Engineer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

8.9 Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

8.10 Official Notice. The State Engineer may take official notice of the following matters:

(a) Rules, regulations, official reports, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

(b) Official documents introduced into the record by proper reference; provided, however, that documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(c) Matters of common knowledge and generally

recognized technical or scientific facts within the State Engineer's specialized knowledge and of any factual information which he may have gathered from a field inspection of the water sources or area involved in the proceeding.

8.11 Oral Argument and Memoranda. Upon the conclusion of the taking of evidence, the State Engineer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the State Engineer.

8.12 Record of Hearing. A record of any hearing may be made at the option of either the State Engineer or any party to the hearing. However, should a party desire a record of any hearing, that party must notify the State Engineer within a reasonable time prior to the time the hearing begins. When a record is made by the State Engineer, it shall be done by means of an automatic recording device. If the tape of the hearing is later transcribed, the transcript will be made available for inspection by any party. The State Engineer will make a transcription only if he deems it advisable and necessary to do so.

If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the State Engineer free of charge. This transcript shall be available at the State Engineer's office to any party to the hearing.

R655-2-9. Decisions and Orders.

9.1 Report and Order. After the State Engineer has reached a final decision upon any proceeding, he shall make and enter a decision containing his findings of fact and conclusions and order.

9.2 Service of Decisions. A copy of the decision shall be served on the parties of record or their representatives by regular mail.

9.3 Judicial Review of State Engineer's Decision. Any person aggrieved by a decision of the State Engineer may, within 60 days after notice thereof, bring a civil action in the district court for a plenary review thereof in accordance with Sections 73-3-14 and -15.

R655-2-10. Re-Hearings.

10.1 Time for Filing. A petition for re-hearing must be filed within 20 days after notice of a written order or decision of the State Engineer.

10.2 Contents of Petition. A petition for re-hearing shall set forth specifically the grounds upon which the petitioner considers the order or decision of the State Engineer to be in error.

10.3 Action on the Petition. Upon the filing of a petition for re-hearing, the State Engineer may set a time for hearing the petition or may summarily grant or deny the petition in whole or in part.

10.4 Re-Hearings Limited. If an order is made granting the petition for re-hearing, it shall be limited to the matter specified in the order. Upon re-hearing, the State Engineer may affirm his former decision or may abrogate it, change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the State Engineer.

R655-2-11. Declaratory Rulings.

Any interested person may petition the State Engineer for a declaratory ruling on the applicability of any decision, rule, regulation, or statutory provision relating to the State Engineer. The petition will be in the same form as other petitions and will set forth in detail the specific facts for which the ruling is requested and the manner in which the petitioner claims the

rule, regulation, decision or statutory provision may affect him. If the petition sets forth information which requires the issuance of a ruling, the State Engineer shall set the matter down for hearing as in other cases.

The State Engineer may in his discretion decline to issue declaratory rulings where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing a ruling.

KEY: water rights procedures

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73-3

63G-4-203

R655. Natural Resources, Water Rights.**R655-6. Administrative Procedures for Informal Proceedings Before the Division of Water Rights.****R655-6-1. Authority and Effective Date.**

A. These rules establish and govern the administrative procedures for informal adjudicative proceedings before the Division of Water Rights as required by Section 63G-4-203.

B. These rules govern all informal adjudicative proceedings commenced on or after January 1, 1988. Adjudicative proceedings commenced prior to January 1, 1988, are governed by R655-2.

R655-6-2. Designation of Informal Proceedings.

All adjudicative proceedings of the Division of Water Rights are hereby designated as informal proceedings and include, but are not limited to, all requests for agency action and notices of agency action concerning applications to appropriate water, change applications, exchange applications, applications to segregate; requests for reinstatement and extension of time; proofs of appropriation and change; applications for extension of time within which to resume use of water and proofs of resumption of use; applications to renovate or replace existing wells; permits and authorizations for dam construction, repair and use; applications and other procedures for utilization of geothermal resources; licenses and other permits for water well drillers; applications for stream alteration; and other adjudicative proceedings involving water right administration.

R655-6-3. Definitions.

A. "Adjudicative Proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63G, Chapter 4 shall not be included within this definition.

B. "Division" means the Division of Water Rights.

C. "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

D. "Staff" means the Division of Water Rights staff.

E. "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or other agency.

F. "Party" means the Division or other person commencing an adjudicative proceeding, all respondents, all protestants, all persons permitted by the Presiding Officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

G. "Presiding Officer" means the State Engineer, or an individual or body of individuals designated by the State Engineer, designated by the agency's rules, or designated by statute to conduct a particular adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division or any other person.

I. "Application" means any application which has been filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6, and shall include, but not be limited to, applications enumerated in R655-6-5.B.3. An application is also a request for agency action. The substantive rules governing the filing and perfecting of these documents are specified in the above Chapters and in other Division rules, and R655-6 governs only the administrative procedures for those applications which have been properly filed.

J. "Applicant" is a person applying for an application.

K. "Protestant" means a person who timely protests an application before the State Engineer pursuant to Section 73-3-7 or who files a protest pursuant to Section 73-3-13.

R655-6-4. Construction.

A. These rules shall be construed in accordance with Title 63G, Chapter 4, and these rules supersede any conflicting provision of procedural rules promulgated by the Division.

B. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division.

C. Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

D. Any pleading or other document required to be filed with the Division shall be considered to be filed on the date the signed original is actually deposited with the Division and not on the date of postmark.

R655-6-5. Commencement of Proceedings.

A. Proceedings Commenced by the Division.

1. All informal adjudicative proceedings commenced by the Division shall be initiated by a notice of agency action as provided by applicable statute, Division policies, and Subsection 63G-4-201(2).

2. The Presiding Officer may require the person against whom the agency action is commenced to file a response within 30 days of the mailing or publication date of the notice of agency action.

B. Proceedings Commenced by Persons Other Than the Division.

1. All informal adjudicative proceedings commenced by persons other than the Division shall be commenced by either completing and submitting prepared forms requesting agency action which are available at the Division or, if no forms are required to initiate a particular proceeding, by submitting in writing a request for agency action which shall include at least the following:

- a. the names and addresses of all persons to whom a copy of the request for agency action is being sent;
- b. the Division's file number or other reference number, if known;
- c. the date that the request for agency action was mailed;
- d. a statement of the legal authority and jurisdiction under which agency action is requested;
- e. a statement of the relief or action sought from the Division;
- f. a statement of the facts and reasons forming the basis for relief or agency action;
- g. the name, address and telephone number of the person requesting agency action;
- h. the signature of the person requesting agency action;

and

i. any filing fees required by statute.

2. For purposes of requests for agency action filed pursuant to Title 73, the adjudicative proceeding commences on the date the request is received by the Division and not on the date of postmark.

3. Forms Requesting Agency Action

The following forms requesting agency action shall be used by persons requesting a particular agency action and are available from the Division:

- a. Application to Appropriate Water
- b. Temporary Application to Appropriate Water

- c. Application for Permanent Change of Water
 - d. Application for Temporary Change of Water
 - e. Application to Segregate a Water Right
 - f. Request for Reinstatement and Extension of Time
 - (i) Before Fourteen Years
 - (ii) After Fourteen Years
 - g. Proof of Appropriation of Water
 - h. Proof of Permanent Change of Water
 - i. Application for Exchange of Water
 - j. Application for Extension of Time Within Which to Resume Use of Water
 - k. Proof of Resumption of Use of Water
 - l. Application to Renovate or Replace an Existing Well
 - m. Application to Construct a Dam Impounding Less Than 20 Acre-Feet
 - n. Application for Well Driller's License
 - o. Permit Application to Alter a Natural Channel
4. Upon receipt of a request for agency action, the Presiding Officer shall promptly review the request and shall act in accordance with Subsections 63G-4-201(3)(d) and (e).
5. Protests pursuant to Title 73, Chapters 1, 2, 3, 5 and 6 shall be filed in accordance with the governing statutes and these rules.

a. Protests should be filed on letter-sized paper, typewritten and double-spaced, but may be submitted in legible handwritten form. Protests should identify the water right by water right number, state the complete mailing address of the protestant, and should contain a clear, concise statement of the matter relied upon as the basis for the protest, together with an appropriate request for relief. If the name or address of the protestant is not legible, the Division shall not be obligated to give the protestant notice of any further proceedings.

b. Protests signed by more than one person shall be accepted. However, persons filing a multiple-person protest are encouraged to designate a representative for the group of protestants who shall receive all notices on behalf of all who signed the protest. If no representative is designated, each person signing the protest shall be considered a protestant, and shall receive notice of any further proceedings, if their name, mailing address and phone number are clearly legible.

c. Upon the filing of a protest the Presiding Officer shall mail a copy of the protest to the applicant. The applicant may file with the Division an answer to the protest within the time designated by the Presiding Officer. The Presiding Officer shall mail copies of any answer to the protestant, or attorney or authorized representative, if any. The protestant may file a response to the answer with the Division within the time designated by the Presiding Officer. The Presiding Officer shall mail a copy of the response to the applicant.

d. Protests filed after the protest period has expired shall be placed on file and become part of the record. Any person filing a late protest is not a party and may receive notice of any further proceeding, hearing or order.

R655-6-6. Pleadings.

A. Pleadings before the Presiding Officer for administrative hearings may consist of a notice of agency action, a request for agency action, responses, protests, answers to protests, responses to answers, motions together with affidavits, briefs, memoranda of law and fact in support thereof, requests for reconsideration, and other pleadings as allowed by Title 63G, Chapter 4.

B. Motions may be submitted for the Presiding Officer's decision on either written or oral argument, and the filing of affidavits in support or contravention thereof may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

C. Amendments to Pleadings.

The Presiding Officer may allow pleadings to be amended

or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

D. Service of Pleadings.

Except as otherwise specified in R655-6-5.B.5.c., all persons filing pleadings after the request for agency action or the notice of agency action have been filed shall serve copies of the pleadings by regular mail to all parties or their attorney of record or authorized representative on the date of filing the pleadings with the Division. Service upon any attorney or authorized representative constitutes service on the represented party. Service shall be deemed complete on the date of mailing.

E. Post-Hearing Pleadings.

Before or after a hearing is concluded, any party may seek permission from, or may be asked by, the Presiding Officer to file a memorandum or other information. All other parties shall have 20 days, unless shortened or lengthened by the Presiding Officer, from the date of service within which to file responsive pleadings. The filing of any further post-hearing pleadings shall be by permission of the Presiding Officer.

R655-6-7. Hearings.

A. The Division shall hold a hearing if a hearing is required by statute or rule.

B. The Division shall hold a hearing if a hearing is permitted by rule and is requested by a party in writing within 10 days of when the adjudicative proceeding commences, or within the time prescribed in the notice of agency action or by the Presiding Officer.

C. The Division may hold a hearing if a hearing is requested in a timely filed protest.

D. The Division may at its discretion hold a hearing on any adjudicative proceeding to determine matters within its authority.

E. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

F. Hearings shall be held for most adjudicative proceedings in the county where the water source is located or the county where the majority of the parties reside. Hearings may be held outside the county at the discretion of the state engineer.

G. If no hearing is held for a particular adjudicative proceeding, the Division shall within a reasonable time issue a decision pursuant to R655-6-16.

R655-6-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R655-6-9. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of identifying and simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R655-6-10. Continuance.

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R655-6-11. Parties to a Hearing.

A. All hearings shall be open to all parties and all parties shall be entitled to introduce evidence, examine and cross-

examine witnesses, make arguments, and fully participate in the proceeding.

B. Any person not a party to the adjudicative proceeding may participate at a hearing as a witness for a party or, upon the consent of the Presiding Officer, may participate as part of the Division's investigative and fact finding powers. Such a person is not a party to the adjudicative proceeding and may not seek judicial review.

R655-6-12. Appearances and Representation.

A. Taking Appearances.

Parties shall enter their appearances at the beginning of a hearing or at a time designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

B. Representation of Parties.

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

2. Any party may be represented by an attorney at law.

R655-6-13. Failure to Appear--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer at his discretion may continue the matter, or may enter an order of default as provided by Section 63G-4-209, or may proceed to hear the matter in the absence of the defaulting party.

R655-6-14. Discovery, Testimony, Evidence and Argument.

A. Discovery is prohibited but the Division may issue subpoenas or other orders to compel production of necessary evidence.

B. All parties shall have access to non-confidential and non-privileged information contained in the Division's files of public record, and to all materials and information gathered in any investigation, to the extent permitted by law.

C. Testimony.

At the hearing, the Presiding Officer shall accept oral or written testimony from any party or witness. Further, the Presiding Officer shall have the right to question and examine any party or witnesses called to present testimony at a hearing. The testimony and statements received at hearings may be under oath.

D. Order of Presentation of Evidence.

Unless otherwise directed by the Presiding Officer at a hearing, the evidence shall be presented first by the party commencing the adjudicative proceeding. Each party may offer rebuttal evidence.

E. Rules of Evidence.

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence may be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may not be excluded solely because it is hearsay.

F. Documentary Evidence.

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

G. Official Notice.

The Presiding Officer may take official notice of the following matters which shall be considered as facts presented at the hearing:

1. Rules, regulations, official and unofficial reports,

surveys, maps, investigations, all Division files, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

2. Official documents introduced into the record by proper reference; provided, however, documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

3. Matters of common knowledge and generally recognized technical or scientific facts within the Division's specialized knowledge, and any factual information which the Division may have gathered from a field inspection of the water sources or area involved in the proceeding.

H. Oral Argument and Memoranda.

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R655-6-15. Record of Hearing.

A. A record of any hearing may be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

B. If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R655-6-16. Orders.

A. After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files or records and on the facts presented in evidence at any hearings.

B. The signed order described in this section or an order issued in response to a timely-filed request for reconsideration shall constitute the final agency action.

C. A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R655-6-17. Requests for Reconsideration.

A. Who may file.

Any aggrieved party may file a Request for Reconsideration by following the procedures of Section 63G-4-302. A Request for Reconsideration is not a prerequisite for judicial review.

B. Action on the Request.

Upon the filing of a Request for Reconsideration, the Division shall review the Request and may within 20 days do any or all of the following:

1. issue any preliminary order;
2. summarily deny the Request in whole or in part;
3. summarily grant the relief requested in whole or in part;

or

4. set a time for a re-hearing.

C. If the Division does not issue an order within 20 days, the Request shall be considered to be denied.

D. Re-Hearings Limited.

If an order is made granting a rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the Presiding Officer may affirm his former decision or may abrogate it, or may change or modify the same in any particular.

That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the Presiding Officer.

R655-6-18. Judicial Review.

A. Any party aggrieved by an order of the State Engineer may obtain judicial review by following the procedures and requirements of Sections 63G-4-401 and -402 and 73-3-14 and -15.

B. The Division may grant a stay of its order or other temporary remedy during the pendency of judicial review on its own motion, or upon petition of a party pursuant to the provisions of Section 63G-4-405.

R655-6-19. Declaratory Orders.

Any interested person may file a request for agency action requesting that the State Engineer issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division pursuant to Section 63G-4-503. A request for a declaratory order shall be filed in accordance with Subsection 63G-4-201(3) which request commences an informal adjudicative proceeding. A request shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested. Persons may intervene in declaratory proceedings upon filing a timely petition to intervene in accordance with the provision of Section 63G-4-207.

The State Engineer may at his discretion decline to issue declaratory orders if the request concerns matters in issue before a pending adjudicative proceeding, or where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing an order.

R655-6-20. Emergency Orders.

Except as otherwise provided for by statute, the Division may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63G-4-502.

KEY: administrative procedures, water rights

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R655. Natural Resources, Water Rights.**R655-14. Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights.****R655-14-1. Authority.**

(1) These rules establish procedures for enforcement adjudicative proceedings which may be commenced under Section 73-2-25. Under Subsection 73-2-1(4)(g), the State Engineer, as the Director of the Utah Division of Water Rights, is required to make rules regarding enforcement orders and the imposition of fines and penalties.

(2) The State Engineer's powers and duties include acting on behalf of the State of Utah to administer, as the agency head of the Division of Water Rights, the distribution and use of all surface and ground waters within the state in accordance with statutory authority, including but not limited to Sections 73-2-1, 73-2-1.2, and 73-2-25.

R655-14-2. Application and Preamble.

(1) These rules are applicable statewide to the use of the waters of the state. Additional rules may be promulgated to address enforcement for specific hydrologic areas.

(2) The Division may issue an Initial Order for any violation of the Water and Irrigation Code as set forth in Subsection 73-2-25(2)(a).

(3) Following the issuance of an Initial Order, the respondent may contest the Initial Order in a proceeding before the State Engineer or the appointed Presiding Officer. Enforcement adjudicative proceedings are not governed by the Utah Administrative Procedures Act as provided under Subsection 63G-4-102(2)(s) and are not governed by Rule R655-6 regarding informal proceedings before the Division of Water Rights.

(4) These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R655-14-3. Purpose.

(1) These rules are intended to:

(a) Assure the protection of Utah's water and the public welfare by promoting compliance and deterring noncompliance with the statutes, rules, regulations, permits, licenses and orders administered and issued under the Division's authority by removing any economic benefit realized as a direct or indirect result of a violation; and

(b) Assure that the State Engineer assesses and imposes administrative fines and penalties lawfully, fairly, and consistently, which fines and penalties reflect:

(i) The nature and gravity of the violation and the potential for harm to Utah's water and the public welfare by the violation;

(ii) The length of time which the violation was repeated or continued; and

(iii) The additional costs which are actually expended by the Division during the course of the investigation and subsequent enforcement.

(c) Clarify the Division's authority to enforce the laws it administers under the State Engineer's supervision, and the rules, regulations, permits, and orders adopted pursuant to appropriate authority.

(2) The three elements of the statutorily provided penalties are intended to achieve different aims of equity and public policy. To achieve these aims, the following classes of penalties have been established by statute:

(a) Administrative fines are intended to remove the financial incentive of the violation by removing the economic benefit as well as imposing a punitive measure.

(b) Replacement of water is intended to make whole the resource and impacted water users, as far as this is possible, by requiring respondents to leave an amount of water undiverted or undiminished in the resource for use by others. The allowance of up to 200% replacement indicates the penalty can incorporate

a punitive element, as appropriate.

(c) Reimbursement of enforcement costs is intended to make whole the state by requiring a violator to replace the public funds expended to achieve compliance with the law.

R655-14-4. Definitions.

(1) Terms used in this rule are defined in Section 73-3-24.

(2) In addition,

(a) "Administrative Penalty" means a monetary fine or water replacement ordered by the Presiding Officer to be paid or accomplished by the respondent in response to a violation of, or a failure to comply with, a law administered by the State Engineer, or any rule, regulation, license, permit or order adopted pursuant to the State Engineer's authority.

(b) "Cease and Desist Order" (CDO) means a written order issued by the State Engineer or the Enforcement Engineer requiring a respondent to cease and desist violations and/or directing that positive steps be taken to mitigate any harm or damage arising from the violation, including a notice of administrative penalties to which a respondent may be subject. CDO's are further described in Section R655-14-11. A CDO constitutes an Initial Order (IO), whether issued alone or in conjunction with a Notice of Violation (NOV).

(c) "Consent Order" means an order issued by the Presiding Officer reflecting a stipulated and voluntary agreement between the parties concerning the resolution of an enforcement adjudicative proceeding. A Consent Order constitutes a Final Judgment and Order.

(d) "Default Order" means an order issued by the Presiding Officer after a respondent fails to participate or continue to participate in an enforcement proceeding. A Default Order constitutes a Final Judgment and Order.

(e) "Distribution Order" means a written order from the State Engineer that includes any or all of the following:

(i) An interpretation of the water rights on a river system or other water source and procedures for the regulation and distribution of water according to those water rights;

(ii) A requirement of specific action or actions on the part of a water right owner or a group of water right owners to ensure that water is diverted, measured, stored, or used according to the water rights involved and that the diversion, storage, or use does not infringe on the rights of other water right owners;

(iii) A description of the hydrologic limitations of a river system or other water source and a plan based on the water rights of record designed to manage and maximize beneficial use of water while protecting the sustainability of the water source;

(iv) A requirement that reports be submitted to the Division as provided in Section 73-5-8.

(v) A regulation tag issued by the Division or by a Water Commissioner according to Section 73-5-3 and as defined in Section R655-15.

(f) "Division" means the Division of Water Rights.

(g) "Economic Benefit" means the benefit actually or potentially realized and/or a cost actually or potentially avoided by a violator as a result of unlawful activity defined as a violation in an IO.

(h) "Enforcement Costs" means a monetary sum ordered by the Presiding Officer to be paid by a respondent for any expense incurred by the State Engineer in investigating and stopping a violation of, or a failure to comply as defined herein. Enforcement costs are further defined in this rule at Subsection R655-14-12(6). Collection of said costs is authorized at Subsection 73-2-26(1)(a)(iii).

(i) "Enforcement Engineer" means the State Engineer or an authorized delegate who may commence and prosecute an enforcement action pursuant to Subsection 73-2-25(2)(a).

(j) "Filed" means timely submitted to the Division

pursuant to Subsection R655-14-8(3).

(k) "Files" means information maintained in the Division's public records, which may include both paper and electronic information.

(l) "Final Judgment and Order" means a final decision issued by the Presiding Officer on the whole or a part of an enforcement adjudicative proceeding. This definition includes "Consent Orders" and "Default Orders."

(m) "Initial Administrative Penalty" means an administrative fine, a requirement to replace water unlawfully taken, and/or the enforcement costs required to be repaid as these are described and set forth in the Initial Order (IO) as required at Subsection 73-2-25(2)(b)(ii). These penalties do not include accrued penalties for violations continuing past the date of the IO.

(n) "Initial Order" (IO) means a Notice of Violation and/or a Cease and Desist Order.

(o) "Issued" as it applies to an IO or a Final Judgment and Order means the document has been executed by an authorized delegate of the State Engineer (in the case of an IO) or by the Presiding Officer (in other cases) and deposited in the mail.

(p) "Knowing" or "Knowingly" as used in Section 73-2-26, means the same as the definition contained in Section 76-2-103. A person engages in conduct knowingly, or with knowledge with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(q) "License" means the express grant of permission or authority by the State Engineer to carry on an activity or to perform an act, which, without such permission or authority, would otherwise be a violation of State law, rule or regulation.

(r) "Location" means the current residential or business address of a party as recorded in the Division's files. If a current residential address is not available for an individual, "location" means an employment or business address if known, or nonresidential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

(s) "Mitigation" means compensation acceptable to the Division for injury caused by a stream channel or dam safety violation.

(t) "Noncompliance" or "Nonconformance" or "Failure to Comply" or "Violation" each means any act or failure to act which constitutes or results in:

(i) Engaging in an activity prohibited by, or not in compliance with, any law administered by the State Engineer or any rule, license, permit or order adopted or granted pursuant to the State Engineer's authority;

(ii) Engaging in an activity without a necessary permit or approval that is required by law or regulation;

(iii) The failure to perform, or the failure to perform in a timely fashion, anything required by a law administered by the State Engineer or by a rule, license, permit or order adopted pursuant to the State Engineer's authority.

(u) "Notice of Violation" (NOV) means a written notice issued by the Enforcement Engineer that informs a respondent of Water and Irrigation Code violations. Notice of Violation is further described in Section R655-14-11. A NOV constitutes an Initial Order (IO), whether issued alone or in conjunction with a Cease and Desist Order (CDO).

(v) "Participate" means, in an enforcement proceeding that was commenced by an IO, to:

(i) Present relevant information to the Presiding Officer within the time period prescribed by statute or rule or order of the Presiding Officer for submitting relevant information or requesting a hearing; and/or

(ii) Attend a preliminary conference or hearing if a preliminary conference or hearing is scheduled and a notice is properly issued.

(w) "Party" means the State Engineer, an authorized delegate of the State Engineer, and/or the respondent(s).

(x) "Permit" means an authorization, license, or equivalent control document issued by the State Engineer to implement the requirements of any federally delegated program or Utah law administered or enforced by the State Engineer.

(y) "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department bureau, agency, department or political subdivision of State or Federal Government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

(z) "Post Initial Order Penalty Adjustments" means those adjustments, in the form of increases or decreases, made by the Presiding Officer to the initial administrative penalties assessed in the IO in consideration of information pertaining to the violation.

(aa) "Presiding Officer" means the State Engineer or an authorized delegate of the State Engineer who conducts an enforcement adjudicative proceeding.

(ab) "Record" means the official collection of all written and electronic materials produced in an enforcement proceeding, including but not limited to the IO, pleadings, motions, exhibits, orders and testimony produced during the adjudicative proceedings, as well as the files of the Division as defined herein.

(ac) "Respondent" means any person against whom the Enforcement Engineer commences an enforcement action by issuing an IO.

(ad) "Requirement" means any law administered by the State Engineer, or any rule, regulation, permit, license or order issued or granted pursuant to the State Engineer's authority.

(ae) "State Engineer" is the Director and agency head of the Division of Water Rights in whom ultimate legal authority is vested by Sections 73-2-1 and 73-2-1.2.

(af) "Unknowingly" or "Not Knowing" means the converse of the definition of "Knowingly" contained in Section 76-2-103. A person engages in conduct unknowingly, or without knowledge with respect to his conduct or to circumstances surrounding his conduct when he is unaware of the nature of his conduct or the existing circumstances. A person acts unknowingly, or without knowledge, with respect to a result of his conduct when he is unaware that his conduct is reasonably certain to cause the result.

(ag) "Water Commissioner" or "Commissioner" means a person appointed to distribute water within a water distribution system pursuant to Section 73-5-1 and Section R655-15.

(ah) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.

(ai) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.

(aj) "Well drilling" means the act of drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well.

R655-14-5. Other Authorities.

(1) Nothing in these rules shall limit the State Engineer's authority to take alternative or additional actions relating to the administration, appropriation, adjudication and distribution of the waters of Utah as provided by Utah law.

R655-14-6. Designation of Presiding Officers.

(1) The following persons may be designated Presiding

Officers in adjudicative proceedings:

- (a) Assistant State Engineers;
- (b) Deputy State Engineers; or
- (c) Other qualified persons designated by the State Engineer.

R655-14-7. Service of Notice and Orders.

(1) Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 73-2-25 shall be served upon the respondent at the respondent's location using certified mail or methods described in Rule 5 of the Utah Rules of Civil Procedure.

R655-14-8. Computation of Time.

(1) Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.

(2) The Presiding Officer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion.

(3) Documents required or permitted to be filed under these rules shall be filed with the Division, to the attention of the Presiding Officer or Enforcement Engineer, as may be required, within the time limits for such filing as set by the Enforcement Engineer, the Presiding Officer, or other provision of law. Papers filed in the following manner shall be deemed filed as set forth:

(a) Papers hand delivered to the Division during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped received by the Division.

(b) Papers deposited in the U.S. mail shall be deemed filed on the date stamped received by the Division. In the event that no stamp by the Division appears, papers shall be deemed filed on the postmarked date.

(c) Papers transmitted by facsimile, telecopier or other electronic transmission shall not be accepted for filing unless permitted in writing by the Presiding Officer, the Enforcement Engineer or by this rule.

R655-14-9. Filings Generally.

(1) Papers filed with the Division shall state the State Engineer Agency Action (SEAA) number, the title of the proceeding, and the name of the respondent on whose behalf the filing is made.

(2) Papers filed with the Division shall be signed and dated by the respondent on whose behalf the filing is made or by the respondent's authorized representative. The signature constitutes certification that the respondent:

- (a) Read the document;
- (b) Knows the content thereof;
- (c) To the best of the respondent's knowledge, represents that the statements therein are true;
- (d) Does not interpose the papers for delay; and
- (e) If the respondent's signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.

(3) All papers, except those submittals and documents that are kept in a larger format during the ordinary course of business, shall be submitted on an 8.5 x 11-inch paper. All papers shall be legibly hand printed or typewritten.

(4) The Division may provide forms to be used by the parties.

(5) The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.

(6) Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

R655-14-10. Motions.

(1) A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are allowed under these Rules and the Utah Rules of Civil Procedure.

(2) Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing or a preliminary conference. Each motion shall set forth the grounds for the desired order or action and, if submitted in writing, state whether oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

R655-14-11. Options for Adjudicative Enforcement.

(1) The State Engineer may pursue any combination of the following administrative and judicial enforcement actions depending upon the circumstances and gravity of each case.

(a) Notice of Violation: a formal notice of a suspected violation issued in accordance with Section 73-2-25 which:

(i) Cites the law, rule, regulation, permit and/or order allegedly violated;

(ii) States the facts that form the basis for the State Engineer's belief that a violation has occurred;

(iii) States the administrative fine, enforcement costs, and/or other penalty to which the respondent may be subject;

(iv) Specifies a reasonable deadline or deadlines by which the respondent:

(A) Shall comply with the requirements described in the Notice of Violation, and/or

(B) Shall pay the administrative fine and enforcement costs, and/or

(C) Shall submit a written plan or proposal setting forth how and when the respondent proposes to replace water taken without right.

(v) Informs the respondent:

(A) Of the right to file a timely written request for a hearing on the alleged violation, the administrative penalties defined, or both;

(B) That the respondent must file said written request for a hearing with Division within fourteen (14) days after service of the Notice of Violation;

(C) That said written request shall strictly comply with R655-14-16;

(D) That said notice shall become the basis for a Final Judgment and Order of the Presiding Officer upon the respondent's election to waive participation or failure to timely respond or otherwise participate in the proceeding, and

(E) That the Enforcement Engineer may treat each day's violation as a separate violation in describing the Initial Administrative Penalty under Subsection 73-2-25 (2)(b)(ii); that is, the administrative penalty continues to accrue each day from the time the violation begins until compliance is achieved.

(vi) Identifies the individual to whom correspondence and inquiries regarding the Notice of Violation should be directed;

(vii) States to whom and the date by which the administrative fine and enforcement costs shall be paid if the

respondent elects to waive or fails to request an adjudicative hearing in a timely manner and elects to pay the fine and costs; and

(viii) States the State Engineer's authority to pursue further administrative or judicial enforcement action.

(b) Cease and Desist Order (CDO): an immediate compliance order issued pursuant to Section 73-2-25 either upon discovery of a suspected violation of the Water and Irrigation Code or in combination with a Notice of Violation, which:

(i) Cites the law, rule, license, permit, notice and/or order allegedly violated;

(ii) Describes the act or course of conduct that is prohibited by the Cease and Desist Order;

(iii) Orders the respondent to immediately cease the prohibited act or prohibited course of conduct;

(iv) States any action deemed necessary by the Enforcement Engineer to confirm compliance and assure continued compliance;

(v) Takes effect immediately upon the date issued or within such time as specified by the Enforcement Engineer in the CDO; and

(vi) States the administrative penalties to which the respondent may be subject for any violation of the CDO.

(c) Court Action

(i) Civil: direct recourse to a court of competent jurisdiction either in addition to or in lieu of administrative action where:

(A) It is necessary to enforce a Final Judgment and Order and seek civil and/or administrative penalties

(B) An imminent threat to the public health, safety, welfare or environment exists which warrants injunctive or other emergency relief; or

(C) A pattern of continuous, significant violations exists such that administrative enforcement action alone is unlikely to achieve compliance; or

(D) The court is the most convenient or appropriate forum for resolution of the dispute.

(ii) Criminal: referral to the County Prosecutor or the Attorney General's Office for prosecution or criminal investigation where:

(A) The alleged act or failure to act may be defined as a criminal offense by state law;

(B) Enforcement is beyond the jurisdiction or investigative capability of the State Engineer; or

(C) Criminal sanctions may be appropriate.

(d) Miscellaneous - other enforcement options may be pursued to achieve compliance. Additional options include, but are not limited to:

(i) Joint actions with, or referrals to, other federal, state or local agencies;

(ii) Direct legal or equitable actions in state or federal court; and/or

(iii) Denial, suspension or revocation of state-granted licenses, approvals permits or certifications.

(2) Unless otherwise stated, all notices, orders and judgments are effective upon the date issued.

(3) Combinations of enforcement actions are not mutually exclusive and may be concurrent and/or cumulative.

(4) An IO may be incorporated into a Default Order if the respondent fails to participate as defined herein.

R655-14-12. Administrative Penalties and Administrative Costs.

(1) Pursuant to Sections 73-2-1 and 73-2-25 and these rules, the Enforcement Engineer shall assess the initial administrative penalties, which may include an administrative fine, a requirement to replace water and the reimbursement of enforcement costs to which the respondent may be subject for any violation as set forth in Subsection 73-2-25(2)(a).

(2) No penalty shall exceed the maximum penalty allowed by Subsection 73-2-26(1), as may be amended.

(3) Each day a violation is repeated, continued or remains in place, constitutes a separate violation.

(4) The penalty imposed shall begin on the first day the violation occurred, and may continue to accrue through and including the day the Notice of Violation and/or Cease and Desist Order is issued, or the Final Judgment and Order is issued, or until compliance is achieved.

(5) The amount of the penalty shall be calculated based on:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(6) Enforcement costs, interest, late payment charges, costs of compliance inspections, and collection costs may be assessed in addition to the administrative fine. These include:

(a) Enforcement costs: Costs for time spent by Division staff, supervisors, the Presiding Officer, and personnel of the Attorney General's Office, at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(b) Late payment charges: Costs accrued at the monthly percentage rate assessed by the Utah Department of Administrative Services, Office of Debt Collections.

(c) Compliance inspection costs: Time spent by Division staff at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(d) Collection costs: Actual collection costs.

(7) The State Engineer may report the total amount of administrative fines and/or enforcement costs assessed to consumer reporting agencies and pursue collection as provided by Utah law.

(8) Any monies collected under Section 73-2-26 and these rules shall be deposited into the General Fund.

R655-14-13. Replacement of Water.

(1) In addition to administrative fines and enforcement costs, the Enforcement Engineer may impose and the Presiding Officer may order the respondent to replace up to 200 percent of water unlawfully taken in accordance with Section 73-2-26.

(2) The Presiding Officer may order actual replacement of water after:

(a) A respondent fails to request judicial review of a Final Judgment and Order issued under Section 73-2-25; or

(b) Completion of judicial review, including any appeals.

(3) Pursuant to Section 73-2-26, and before imposing or ordering replacement of water, the Enforcement Engineer and the Presiding Officer shall consider the following factors:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(4) The Enforcement Engineer may require and the Presiding Officer may order the respondent to submit a plan to replace water, which shall be submitted in writing and contain the following information:

(a) The name and mailing address of the respondent or persons submitting the plan;

(b) The State Engineer Agency Action (SEAA) number assigned to the IO;

(c) Identification of the water right(s) and property for

which the water replacement plan is proposed;

(d) A description of the water replacement plan; and

(e) Any information that assists the Enforcement Engineer in evaluating whether the proposed water replacement plan is acceptable.

(5) The factors the Enforcement Engineer or Presiding Officer may consider to determine if the plan is acceptable include, but are not limited to:

(a) Whether the plan provides for the respondent to forgo use of a vested water right owned or leased by the respondent until water is replaced to the extent required in the IO or ordered in the Final Judgment and Order;

(b) The reliability of the source of replacement water over the term in which it is proposed to be used under the plan; and

(c) Whether the plan provides for monitoring and adjustment as necessary to protect vested water rights.

(6) As provided in Section 73-2-26, water replaced shall be taken from water to which the respondent would be entitled during the replacement period.

(7) In accordance with Subsection 73-2-26(5)(a), or any other statutory authority, the Division may record any order requiring water replacement in the office of the county recorder where the place of use or water right is located. Any subsequent transferee of such property shall be responsible for complying with the requirements of said order.

R655-14-14. Procedures For Determining Administrative Penalties, Enforcement Costs and Water Replacement.

(1) An administrative fine shall not exceed the maximum amounts established by statute at Subsection 73-2-26 (1), as such may be amended.

(2) For violations per Subsections 73-2-25(2)(a)(i) through (vii), the following procedures shall be employed:

(a) Administrative Fines: This penalty shall be based primarily on the actual economic benefit estimated to result or potentially to result from the violation. The economic benefit may come in the form of a direct economic benefit as income derived directly from the unlawful activity or it may come in the form of avoided costs that would otherwise be incurred in order to comply with a specific statute, rule, notice or order from the State Engineer. The administrative fine assessment procedure used (direct economic benefit or avoided costs) will be that which produces the greater fine. In order to implement the punitive intent of this penalty, a multiplier is to be calculated and applied to the estimated actual direct economic benefit or avoided costs.

(i) "Direct Economic Benefit" Initial Administrative Fine Calculations. The initial administrative fine shall be calculated in the following manner:

(A) The daily economic benefit is equal to the gross income that is or could potentially be realized from the violation (without regard for production costs, taxes, etc.) divided by the number of days of violation. For water right violations, the daily economic benefit is calculated using the gross income through a full period of beneficial use, divided by the number of days in the period of beneficial use.

(B) The daily administrative fine is equal to the product of the daily economic benefit and the multiplier to be calculated as described in paragraph (iii) below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of four times the direct economic benefit or the statutory maximum fine, whichever is less.

(ii) The multiplier for penalties based on direct economic benefit shall be calculated utilizing the following statutory

considerations. (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in the calculations of the economic "benefit" and "injury.")

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others;

(C) The length of time over which the violation has occurred; and

(D) The violator's efforts to comply.

(iii) The penalty multiplier is the sum of the points calculated using Table 1:

TABLE 1

DIRECT ECONOMIC BENEFIT PENALTY MULTIPLIER CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Economic injury to others	
Greater than \$15,000	1.00
\$10,000 to \$15,000	0.75
Less than \$10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Length of violation	
Three (3) or more years of violation	1.00
More than one (1), but less than three (3) years of violation	0.75
One (1) year or less of violation	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(iv) "Avoided Cost Economic Benefit" Initial Administrative Fine Calculation: In some cases, including but not limited to violations under Subsections 73-2-25 (2)(a) (iii) through (vii), an economic benefit may result from an avoided cost of compliance with a notice or order from the State Engineer, or from failure to obtain a necessary approval, permit or license. In the case of a failure to comply with a prior notice or order, the daily administrative fine commences with the day following the compliance date in the notice or order. In the event of a failure to obtain a necessary approval, permit or license, the period of violation is deemed to begin on the first day the unauthorized activity is commenced. The economic benefit and daily administrative fine for an "avoided cost economic benefit" shall be calculated in the following manner:

(A) The total realized economic benefit is equal to the highest calculated avoided costs of failing to implement specific actions required by a statute, rule, notice or order from the State Engineer.

(B) The daily administrative fine is equal to the product of \$20 or 5% of the total realized economic benefit, whichever is greater, and the penalty multiplier to be calculated as described in paragraph (vi), below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation preceding the date of the IO, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of three times the economic benefit or the statutory maximum fine, whichever is less.

(v) The statutory considerations applicable to producing the multiplier for an avoided cost economic benefit are: (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in calculations of the economic "benefit" and

"injury.").

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others; and

(C) The violator's efforts to comply.

(vi) The penalty multiplier is the sum of the points resulting from Table 2:

TABLE 2

AVOIDED COST ECONOMIC BENEFIT PENALTY MULTIPLIER	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Economic injury to others	
Greater than \$15,000	1.00
\$10,000 to \$15,000	0.75
Less than \$10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(b) Replacement of Water: This penalty will be initially calculated as the product of 100% of the amount unlawfully taken and the penalty multiplier previously calculated, but not to exceed 200% of that unlawfully taken. If replacement of water unlawfully taken is deemed to be infeasible by the Enforcement Engineer or the Presiding Officer, this penalty will not be further considered.

(c) Reimbursement of Enforcement Costs: This penalty will be initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the IO.

(3) For violations related to unlawful natural stream channel alteration or dam safety regulations per Subsections 73-2-25(1)(a)(vi) and (vii), the following procedures shall be employed:

(a) Daily Administrative Fine: All enforcement activities for unlawful natural stream alteration or dam safety violations must statutorily result from violation of a prior notice or order. Statute provides for a daily administrative fine with the day following the compliance date in the notice/order being counted as the first day of violation. The calculated daily administrative fine would apply to violations continuing beyond the compliance date set forth in the notice or order. The economic benefit and daily administrative fine shall be calculated in the following manner:

(i) For stream alteration and dam safety violations, there may be a direct economic benefit, or there may be an avoided cost economic benefit deriving from:

(A) Initiating an activity without the benefit of proper permitting and/or,

(B) Failing to implement specific actions required by a notice, order or permit from the State Engineer.

(ii) The daily administrative fine is equal to the product of \$20 or 5% of the total realized economic benefit, whichever is greater, and the multiplier to be calculated as described in paragraph (iii), below.

(iii) The penalty multiplier is calculated as the sum of the points from Table 3 or Table 4, as may be appropriate:

TABLE 3

STREAM ALTERATION PENALTY MULTIPLIER	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00

Unknowing	0.00
Gravity of violation	
Natural stream environment harmed to significant levels not readily reversible by mitigation efforts	1.00
Natural stream environment harmed to moderate levels partially reversible by mitigation efforts	0.75
Natural stream environment harmed to minor levels readily reversible by mitigation efforts	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made no reasonable or effective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator achieved full compliance prior to issuance of Initial Order	0.00

TABLE 4

DAM SAFETY PENALTY MULTIPLIER	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) Related to building, enlarging or substantially altering same without prior approval or authorization; OR	
2) Addressing an existing unsafe condition	1.00
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) Addressing a developing unsafe condition OR	
2) Requiring monitoring or critical dam performance indicators; OR	
Failure to prepare and file acceptable required operational documents, OR	
Failure to comply with a notice or order for a low-hazard dam related to building, enlarging or substantially altering same without prior authorization	0.75
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam related to routine operation or maintenance activities, OR	
Failure to comply with a notice or order for a low-hazard dam to address an existing or developing unsafe condition	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited reasonable or effective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator achieved full compliance prior to issuance of Initial Order	0.00

(iv) The total administrative fine shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(b) Reimbursement of Enforcement Costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(4) For violations under Subsection 73-2-25(2)(a)(viii) related to failure to submit a report required by Section 73-3-25, the following procedures shall be employed:

(a) The daily administrative fine is equal to \$5.00.

(b) The number of days of continuing violation commences 90 days after the day on which the well driller license lapses.

(c) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, up to a maximum fine of \$200.

(d) The total administrative fine shall not exceed the product of the daily administrative fine and the number of days of continuing violation, up to a maximum fine of \$200.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State

Engineer's enforcement costs to the date of the Initial Order.

(5) For violations under Subsection 73-2-25(2)(a)(ix) related to engaging in well drilling without a license required by Section 73-3-25, the following procedures shall be employed:

(a) The direct economic benefit is equal to the gross income that is or could potentially be realized (without regard for production costs, taxes, etc.) from engaging in well drilling (as defined herein) without a license.

(b) The total initial administrative fine is equal to the product of the direct economic benefit resulting from the violation and the penalty multiplier described in paragraph (c) below.

(c) The penalty multiplier is calculated as the sum of the points from Table 5.

TABLE 5

WELL DRILLING PENALTY MULTIPLIER	
CONSIDERATION/ CRITERIA . . .	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.50
Unknowing	1.00
Gravity of Violation	
New well construction	1.00
Deepening a well	0.80
Renovating a well	0.60
Abandoning a well	0.40
Cleaning/developing a well	0.20

(d) The total administrative fine shall not exceed the product of the direct economic benefit and the penalty multiplier.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(6) Post-Initial Order penalty adjustments: Subsequent to issuance of the IO, the Presiding Officer may make adjustments to the initial administrative fine; the requirement for replacement of water unlawfully taken; requirements pertaining to violations of stream channel alteration or dam safety regulations; and/or the requirement for reimbursement of enforcement costs. Such adjustments may be based on one or more of the following considerations:

(a) Errors or Omissions in Calculation of an Initial Administrative Penalty: If shown by acceptable evidence or testimony that any fact used in calculation of the economic benefit, of the quantity of water unlawfully taken, or of the penalty multiplier was in error, or that a significant fact or group of facts was omitted from consideration, the Presiding Officer shall recalculate the initial administrative penalties taking consideration of the corrected or additional fact(s).

(b) Reduction in Penalty Multiplier: The penalty multiplier used in calculating the Initial Administrative Penalties may be reduced according to Table 6 on the basis of the respondent's efforts to comply after receiving the IO.

TABLE 6

PENALTY MULTIPLIER REDUCTION	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Respondent's efforts to comply with the Initial Order	
Respondent has made extraordinary efforts to successfully achieve full and prompt compliance with the IO.	1.00
Respondent has made efforts to successfully achieve full and prompt compliance with the IO, but these efforts are not extraordinary	0.50
Respondent has made efforts that achieve full compliance with the IO, but the efforts were neither extraordinary nor prompt	0.25
Respondent has made no efforts to comply or has made efforts that fail to achieve full compliance with the IO	0.00

If the Presiding Officer determines that the penalty multiplier should be reduced according to the table above, the appropriate number of points will be subtracted from the penalty multiplier used in calculating the initial administrative penalty and the penalty will be re-calculated with the new multiplier.

(c) Failure to take reasonable and effective measures to achieve full and prompt compliance with the requirements of the IO will allow the daily administrative fines to continue to accrue as provided in rule at Subsection R655-14-12(4) until full compliance is achieved.

(d) Adjustments to recovery of enforcement costs:

(i) If shown by acceptable evidence or testimony that any expense incurred by the State Engineer and assessed for reimbursement resulted from activities not pertinent to the violation, the Presiding Officer may reduce that portion of the reimbursement requirement accordingly.

(ii) Pursuit of an enforcement action after issuance of the IO will continue to require the expenditure of varying amounts of staff time and may require acquisition and analysis of special data or information. Such costs may be added to the initial reimbursement requirement, specifically including all costs incurred that are unique to the enforcement action under consideration.

(e) Mitigating Factors: Other factors which the Presiding Officer may consider in amendment of initial penalties for incorporation into a Final Order or Consent Order may include, as appropriate:

(i) Ability to pay: This factor will be considered only if raised by a respondent and only if the respondent provides all necessary information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the respondent. The Presiding Officer shall disregard this factor if a respondent fails to provide sufficient or persuasive financial information. If it is determined that a respondent cannot afford the full monetary penalties prescribed by this rule, or if it is determined that payment of all or a portion of the monetary penalties will preclude the respondent from achieving compliance or from carrying out remedial measures which are deemed more important than the deterrent effect of the monetary penalties, the following options may be considered by the Presiding Officer:

(A) A delayed payment schedule with full payment of monetary penalties to be made at a date not exceeding 180 days from the date the Final Judgment and Order is issued; or

(B) A direct reduction of the monetary penalties, which reduction is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice.

(C) A portion of the monetary penalties may be suspended with conditions as determined by the Presiding Officer, which suspension is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice. Failure by a respondent to adhere to the conditions of the suspension may result in an Order of reinstatement of any part of the suspended monetary penalties, which will be due and payable immediately upon reinstatement.

R655-14-15. Procedures for Conducting Adjudicative Enforcement Proceedings.

(1) The procedures for conducting adjudicative enforcement proceedings are as follows:

(a) In proceedings initiated by an IO, the Presiding Officer shall issue a default order unless the respondent does one of the following within fourteen (14) days of the date the IO is issued:

(i) Satisfies all requirements of the IO, including but not limited to ceasing the violation(s), full payment of all the administrative fines, reimbursement of the State Engineer's enforcement costs in full, and submission of any required water replacement plan; or,

(ii) Files with the Division a timely and proper written response to the IO but waives a hearing and submits the case upon the record. Submission of a case without a hearing does not relieve the respondent from the necessity of providing the facts supporting the respondent's burdens, allegations or defenses; or

(iii) Files with the Division a timely and proper written response to the IO, having timely filed a request for a hearing as provided in the IO and in Section R655-14-16.

(b) Within a reasonable time after the close of an enforcement adjudicative proceeding, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:

(i) A statement of law and jurisdiction;

(ii) A statement of facts;

(iii) An identification of the confirmed violation(s);

(iv) An order setting forth actions required of the respondent(s);

(v) A notice of the option to request reconsideration and the right to petition for judicial review, except as such are waived in a Consent Order;

(vi) The time limits for requesting reconsideration or filing a petition for judicial review, except as such are waived in a Consent Order; and

(vii) Other information the Presiding Officer deems necessary or appropriate.

(c) The Presiding Officer's Final Judgment and Order shall be based on the record, as defined in this rule, or, in the case of a Consent Order, on the stipulation accepted by the parties and the Presiding Officer.

(d) A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

R655-14-16. Request for Hearing.

(1) Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division within fourteen (14) calendar days of the date the IO was issued.

(2) The request for a hearing shall state clearly and concisely the specific facts that are in dispute, the supporting facts, the relief sought, the State Engineer Agency Action (SEAA) number, and any additional information required by applicable statutes and rules.

(3) The Presiding Officer may, upon the Presiding Officer's own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

(4) The Presiding Officer shall, if it is determined a hearing is warranted, give all parties at least three (3) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

(5) Any party may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

R655-14-17. General Requirements for Hearings.

(1) A hearing before a Presiding Officer is permitted in an enforcement adjudicative proceeding if:

(a) The proceeding was commenced by an IO; and

(b) The respondent files a timely request for hearing that meets the requirements of Section R655-14-16; and

(c) The respondent raises a genuine issue of material fact; or

(d) The Presiding Officer determines that a hearing is required to serve the interests of equity or justice.

(2) No genuine issue of material fact exists if:

(a) The evidence presented to the Presiding Officer by the Enforcement Engineer and by the respondent is sufficient to establish the violation of the respondent under applicable law; and

(b) No evidence presented by the respondent conflicts with or substantially counters the evidence the Enforcement Engineer relied on when issuing the IO.

(3) The Presiding Officer may make a decision without holding a hearing if:

(a) Presentation of testimony or oral argument would not advance the Presiding Officer's understanding of the issues involved;

(b) Delay would cause serious injury to the public health and welfare;

(c) Disposition without a hearing would best serve the public interest.

(4) If no hearing is held, the Presiding Officer may issue a Final Judgment and Order in reliance upon the record, as defined in this rule, or may order a preliminary conference to supplement or clarify the record.

(5) A respondent at any time may withdraw the respondent's request for a hearing. The withdrawal shall be filed with the Division, in writing, signed by the respondent or an authorized representative, and is deemed final upon the date filed.

R655-14-18. Preliminary Conference.

(1) The Presiding Officer may require the parties to appear for a preliminary conference prior to granting a request for a hearing or prior to the scheduled commencement of a hearing or at any time before issuing a Final Judgment and Order.

(2) The purpose of a preliminary conference is to consider any or all of the following:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;

(c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; or

(e) Such other matters as may aid in the efficient and equitable disposition of the adjudicative enforcement proceeding.

(3) If a request for hearing has been timely and properly filed and has not been denied, all parties shall prepare and exchange the following information at the initial preliminary conference:

(a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;

(b) A brief summary of proposed testimony;

(c) A time estimate of each witness' direct testimony;

(d) Curricula vitae (resumes) of all prospective expert witnesses.

(4) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.

(5) The Presiding Officer shall give all parties at least three (3) days notice of the preliminary conference.

(6) The notice shall include the date, time and place of the preliminary conference.

R655-14-19. Telephonic or Electronic Hearings and Preliminary Conferences.

(1) The Presiding Officer may conduct hearings or preliminary conferences by telephone or other reliable electronic technology.

R655-14-20. Procedures and Standards for Orders

Resulting from Service of an Initial Order.

- (1) Consent Order:
 - (a) If the respondent substantially agrees with or does not contest the statements of fact in the IO, or if the parties agree to specific amendments to the statements of fact in the IO, the parties may enter into a Consent Order by stipulating to the facts and either or both of the following:
 - (i) Negotiated administrative penalties;
 - (ii) Negotiated replacement of water; or
 - (iii) Negotiated reimbursement of enforcement costs.
 - (b) A Consent Order based on that stipulation, shall be prepared by the Enforcement Engineer for execution by the parties. The executed Consent Order shall be reviewed by the Presiding Officer and, if found to be acceptable, will be signed and issued by the Presiding Officer.
 - (c) A Consent Order issued by the Presiding Officer is not subject to reconsideration or judicial review.
- (2) Final Judgment and Order Without Hearing: If the respondent does not request a hearing or is not granted a request for a hearing, participates by attending a preliminary conference or otherwise presents relevant information to the Presiding Officer, but is unable or unwilling to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based on the record, as defined in this rule.
- (3) Final Judgment and Order After Hearing: If the respondent timely and properly requests a hearing, the hearing request is granted, the respondent participates by attending all scheduled preliminary conferences, and/or by attending the hearing, but is unwilling or unable to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based upon the record, as defined in this rule.
- (4) Default Order: The Presiding Officer may issue a Default Order if the respondent fails to participate as follows:
 - (a) The respondent does not timely request a hearing and fails to respond to the IO; or
 - (b) After proper notice the respondent fails to attend a preliminary conference scheduled by the Presiding Officer; or
 - (c) After proper notice, the respondent fails to attend a hearing scheduled by the Presiding Officer.
- (5) A respondent who fails to participate pursuant to an IO waives any right to request reconsideration of the Final Judgment and Order per Section R655-14-25, but may petition for judicial review per Section R655-14-29.

R655-14-21. Conduct of Hearings.

- (1) All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.
- (2) The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.

R655-14-22. Rules of Evidence in Hearings.

- (1) Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.
- (2) A party may call witnesses and present oral, documentary, and other evidence.
- (3) A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and as may affect the disposition of any interest which permits the person participating to be a party.
- (4) A witness' testimony shall be under oath or affirmation.

- (5) Any evidence may be presented by affidavit rather than by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.
- (6) Relevant evidence shall be admitted.
- (7) The Presiding Officer's decision may not be based solely on hearsay.
- (8) Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.
- (9) All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.
- (10) No evidence shall be admitted after completion of a hearing or after a case is submitted on the record, unless otherwise ordered by the Presiding Officer.
- (11) Intervention is prohibited.
- (12) A respondent appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. The Enforcement Engineer shall present evidence before a Presiding Officer supporting the State Engineer's claim. At the State Engineer's discretion, a representative from the office of the Attorney General may also present supporting evidence.

R655-14-23. Transcript of Hearing.

- (1) Testimony and argument at the hearing shall be either recorded electronically or stenographically. The Division shall make copies of electronic recordings available to any party, upon written request. The fee charged for this service shall be equal to the actual costs of providing the copy. The Division is not responsible to supply any party with a transcript of a hearing.
- (2) If any party shall cause to be produced a transcript of a hearing, a copy of said transcript shall be filed with the Division and provided to all other parties. By order of the Presiding Officer and with the consent of all parties, such written transcript may be deemed an official transcript.
- (3) Corrections to an official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of the adjudicative proceeding. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

R655-14-24. Consent Order.

- (1) At any time prior to the Presiding Officer issuing a Final Judgment and Order, the parties may attempt to settle a dispute by stipulating to a Consent Order.
- (2) Every Consent Order shall contain, in addition to an appropriate order:
 - (a) A statement of facts accepted by the parties;
 - (b) A waiver of further procedural steps before the Presiding Officer and of the right to judicial review; and
 - (c) A statement that the stipulation is enforceable as an order of the State Engineer in accordance with procedures prescribed by law.
- (3) The Consent Order may contain a statement that signing the Consent Order is for settlement purposes only and does not constitute an admission by any party that the law or rules have been violated as alleged in the IO.
- (4) When issued by the Presiding Officer, a Consent Order constitutes a Final Judgment and Order, effective on the date issued.

R655-14-25. Reconsideration.

- (1) Within 14 days after the Presiding Officer issues a

Final Judgment and Order, any party may file a written request for reconsideration stating the specific grounds upon which relief is requested.

(2) Unless otherwise provided by statute, the filing of a request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) The request for reconsideration shall be filed with the Division to the attention of the Presiding Officer and one copy shall be mailed to each party by the party filing the request.

(4) The Presiding Officer may issue a written order granting or denying the request for reconsideration. It is not required that the written order explain the grounds for the Presiding Officer's decision.

(5) If the Presiding Officer does not issue an order granting a request for reconsideration within 14 days after the date it is filed with the Division, the request shall be considered denied.

(6) A Final Judgment and Order in the form of a Consent Order or a Default Order is not subject to a request for reconsideration under this rule.

R655-14-26. Setting Aside a Final Judgment and Order.

(1) On the motion of any party or on a motion by the Presiding Officer, the Presiding Officer may set aside a Final Judgment and Order on any reasonable grounds, including but not limited to the following:

(a) The respondent was not properly served with an IO;

(b) The order has been replaced by a judicial order that covers the same violation and time period;

(c) A rule or policy was not followed when the Final Judgment and Order was issued;

(d) Mistake, inadvertence, excusable neglect;

(e) Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or

(f) Fraud, misrepresentation or other misconduct of an adverse party;

(2) A motion to set aside a final order shall be made in a reasonable time and not more than three (3) months after the Final Judgment and Order was issued.

(3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to set aside a final order by issuing a notice to all parties, including therewith a copy of the motion.

(4) Any party opposing a motion to set aside a final order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

(5) After consideration of the motion to set aside an order and any information received from the parties, the Presiding Officer shall issue an order granting or denying the motion, and provide a copy of the order to all parties.

R655-14-27. Amending Administrative Orders.

(1) On the motion of any party or of the Presiding Officer, the Presiding Officer may amend an IO or Final Judgment and Order for reasonable cause shown, including but not limited to the following:

(a) A clerical mistake made in the preparation of the order; or

(b) The time periods and alleged violation(s) covered in the order overlap the time periods and alleged violation(s) in another order for the same respondents.

(2) A motion by any party to amend an order shall be made in a reasonable time and, if to amend a Final Judgment and Order, not more than three (3) months after the Final Judgment and Order was issued.

(3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to amend an order by issuing a notice. The notice shall include a copy of the motion.

(4) Any party opposing a motion to amend an order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

(5) After considering a motion to amend an order and any relevant information received from the parties, the Presiding Officer shall advise the parties of his determination. If the Presiding Officer determines that the order shall be amended, the Presiding Officer shall issue the amended order to all parties.

R655-14-28. Disqualification of Presiding Officers.

(1) A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his spouse, or a person within the third degree of relationship to either of them or the spouse of such person:

(a) Is a party to the proceeding, or an officer, director, or trustee of a party;

(b) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented, a party concerning the matter in controversy;

(c) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(d) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(e) Is likely to be a material witness in the proceeding.

(2) A Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(3) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Section 67-16-1 et seq.

(4) A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the State Engineer.

R655-14-29. Judicial Review.

(1) Pursuant to Section 73-2-25, a Final Judgment and Order may be reviewed by trial de novo by the district court:

(a) In Salt Lake County; or

(b) In the county where the violation occurred.

(2) A respondent shall file a petition for judicial review of a Final Judgment and Order within 20 days from the day on which the order was issued, or if a request for reconsideration has been filed and denied, within 20 days of the date of denial of the request for reconsideration.

(3) The Presiding Officer may grant a stay of an order or other temporary remedy during the pendency of the judicial review on the Presiding Officer's own motion, or upon the motion of a party. The procedures for notice, for consideration of motions, and for issuing a determination shall be as set forth herein for a motion to set aside a Final Judgment and Order.

KEY: water rights, enforcement, administrative penalties February 10, 2009

73-2-1(4)(g)

73-2-25

73-2-26

73-3-25

R657. Natural Resources, Wildlife Resources.**R657-17. Lifetime Hunting and Fishing License.****R657-17-1. Purpose and Authority.**

(1) Under authority of Section 23-19-17.5, this rule provides the requirements and procedures applicable to lifetime hunting and fishing licenses.

(2) In addition to the provisions of this rule, a lifetime licensee is subject to:

(a) the provisions set forth in Title 23, Wildlife Resources Code of Utah; and

(b) the rules and proclamations of the Wildlife Board, including all requirements for special hunting and fishing permits and tags.

(3) Unless specifically stated otherwise, lifetime licensees shall be subject to any amendment to this rule or any amendment to Section 23-19-17.5.

R657-17-2. Definitions.

Terms used in this rule are defined in Section 23-13-2 and Rule R657-5.

R657-17-3. Lifetime License Entitlement.

(1) (a) A permanent lifetime license card shall be issued to lifetime licensees in lieu of an annual hunting, and fishing license.

(b) The issuance of a permanent lifetime license card does not authorize a lifetime licensee to all hunting privileges. The lifetime licensee is subject to the requirements as provided in Subsection R657-17-1(2).

(2) Each year, a lifetime licensee who is eligible to hunt big game may receive without charge, a permit for the region of their choice for one of the following general deer hunts:

- (i) archery buck deer;
- (ii) any weapon buck deer; or
- (iii) muzzleloader buck deer.

(3) Sales of lifetime hunting and fishing licenses may not be refunded, except as provided in Section 23-19-38.

(4) Lifetime hunting and fishing licenses are not transferable.

(5) Lifetime hunting and fishing licenses are no longer for sale as of March 1, 1994.

(6)(a) Lifetime license holders may participate in the Dedicated Hunter Program.

(b) Upon entering the Dedicated Hunter Program, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general season or general muzzleloader deer hunts as provided in Section 23-19-17.5 during enrollment in the Dedicated Hunter Program.

(7)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5 during the year the general any weapon buck deer and bull elk combination permit is valid.

R657-17-4. General Deer Permits.

(1)(a) The division shall send a reminder notice to each lifetime licensee eligible to hunt big game prior to the beginning of the annual bucks, bulls and once-in-a-lifetime application period as prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The lifetime licensee shall, prior to the end of the annual bucks, bulls and once-in-a-lifetime application period, complete and submit an online Lifetime Questionnaire through the division's web site.

(2)(a) Except as provided in Subsection (e) and Subsection (f), the division may not issue a permit to any lifetime licensee

who was given notice of the deadline as provided in Subsection (1)(a) and fails to submit a complete Lifetime Questionnaire to the division.

(b) If an error is found the division reserves the right to:

- (i) contact the lifetime licensee to correct the error; or
- (ii) correct the lifetime licensee's choice of general deer permits.

(d) If the division is unable to correct the error, the lifetime licensee may not receive a permit, except as provided in Subsection (f).

(e) The director or his designee may issue a permit to a lifetime licensee who did not receive reasonable notice of the deadline as provided in Subsection (1)(a).

(f) If a lifetime licensee fails to submit a Lifetime Questionnaire by the deadline provided in Subsection (1)(b), the lifetime licensee may obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

(3) As used in this section "notice" means that a reminder was sent within a reasonable time before the deadline as provided in Subsection (1)(b) to the most recent address given to the division by the lifetime licensee.

(4) The Division will provide lifetime licensees notification confirming the information received on the Lifetime Questionnaire.

(5) Lifetime licensees must notify the division of any change of mailing address, residency, address, telephone number, physical description, driver's license number or email address.

(6)(a) Lifetime licensees may apply for or obtain general deer preference points or permits through the big game general buck deer drawing as provided in Rule R657-62 and the proclamation of the Wildlife Board for taking big game, provided the lifetime licensee waives their choice of general deer permits as provided in Subsection R657-17-3(2) and the region in which the lifetime licensee chooses to hunt.

(b) If a lifetime licensee does not draw a general deer permit through the big game general buck deer drawing, the lifetime licensee may only obtain a general deer permit when made available to the public for over-the-counter purchase.

R657-17-5. Applying for Limited Entry Permits in the Bucks, Bulls and Once-In-A-Lifetime Drawing.

(1) A lifetime licensee may apply for a limited entry permit offered through the bucks, bulls and once-in-a-lifetime drawing using a bucks, bulls and once-in-a-lifetime application.

(2) Limited entry permit species and application procedures are provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3)(a) If the lifetime licensee applies for and is successful in obtaining a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, a general deer permit will not be issued.

(b) If the lifetime licensee does not draw a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, the general deer permit requested on the Lifetime Questionnaire shall be issued.

(4) Applying for or obtaining an antlerless deer, antlerless elk, or doe pronghorn permit does not affect eligibility for obtaining a general buck deer permit.

(5) All rules established by the Wildlife Board regarding the availability of big game permits in relation to obtaining general deer permits shall apply to lifetime licensees.

R657-17-6. Hunter Education Requirements -- Minimum Age for Hunting.

(1) The division shall issue a lifetime license only those

licenses, permits, and tags for which that person qualifies according to the hunter education requirements, age restrictions specified in this Section and Title 23, Wildlife Resources Code of Utah, and suspension orders of a division hearing officer.

(2)(a) Lifetime licensees born after December 31, 1965, must be certified under Section 23-19-11 to engage in hunting.

(b) Proof of hunter education must be provided to the division by the lifetime licensee.

(3) Age requirements to engage in hunting are as follows:

(a) A lifetime licensee must have completed a valid hunters education course to hunt.

(b) A lifetime licensee must be 12 years of age or older to hunt big game.

R657-17-7. Change of Residency.

(1) A lifetime hunting and fishing license shall remain valid if the licensee changes residency to another state or country.

(2)(a) A lifetime licensee who no longer qualifies as a resident under Section 23-13-2 shall notify the division within 60 days of leaving the state.

(b) The division shall issue the lifetime licensee a new lifetime hunting and fishing license with the change of address after the lifetime licensee surrenders the lifetime hunting and fishing license with the previous address.

(3) A lifetime licensee who does not qualify as a resident shall purchase the required nonresident permits or tags required for hunting, except as provided in Subsection R657-17-3(2).

R657-17-8. Lost or Stolen Lifetime Hunting and Fishing License.

(1) If a lifetime hunting and fishing license is lost or stolen, a duplicate may be obtained from any division office by:

(a) providing verification of identity; and

(b) paying a lifetime hunting and fishing license duplication fee.

KEY: wildlife, game laws, hunting and fishing licenses

May 10, 2010 23-19-17.5

Notice of Continuation November 21, 2005 23-19-40

23-19-11

R657. Natural Resources, Wildlife Resources.**R657-21. Cooperative Wildlife Management Units for Small Game and Waterfowl.****R657-21-1. Purpose and Authority.**

Under authority of Section 23-23-3, this rule provides the procedures, standards, and requirements for Cooperative Wildlife Management Units for the hunting of small game and waterfowl.

R657-21-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "BLM" means Bureau of Land Management.

(b) "CWMU" means Cooperative Wildlife Management Unit.

(c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependent children.

(d) "Small game" means, for purposes of this rule only, band-tailed pigeon, cottontail rabbit, grouse, mourning dove, partridge, pheasant, ptarmigan, quail, and snowshoe hare.

R657-21-3. Operation by Landowner Association.

(1)(a) Cooperative Wildlife Management units shall be operated by a landowner or landowner association that owns land within the CWMU.

(b) Any person hunting on a CWMU must comply with all rules established by the Wildlife Board.

(2)(a) Cooperative Wildlife Management units organized for hunting small game and waterfowl shall consist of private land.

(b) The minimum acreage accepted for a CWMU is 320 contiguous acres.

(3)(a) Seventy-five percent of the enrolled land shall be open to hunting.

(b) All land open to private hunters shall be open to public hunters.

(c) All hunters shall be given an equal opportunity.

R657-21-4. Application for Certificate of Registration.

(1) Applications for a CWMU are available from division offices.

(2) In addition to the application, the landowner or landowner association must provide:

(a) a petition containing the dated signature and acreage of each participating landowner agreeing to terms of this rule;

(b) two original 1:100,000 scale BLM Surface Management Status maps showing all interior and exterior boundaries, lands enrolled and not enrolled within the exterior boundaries, and the county identification tax numbers; and

(c) all nonrefundable handling and application fees in accordance with the fee schedule.

(3) The division may return any application that is incomplete or completed incorrectly.

(4) Applications must be completed and returned to the respective division regional office, in which the CWMU is located, 60 days prior to the applicable hunting season.

(5)(a) Upon receipt of the completed application, the division may issue a certificate of registration to a landowner or landowner association to operate a CWMU.

(b) Division review of the application may require up to 45 days.

(c) If an application is rejected, the division shall provide the landowner or landowner association with written notification of the reasons for rejection within 30 days from the date of rejection.

(6) Certificates of registration are issued annually and are effective from the date of issuance through June 30 of the

following year.

R657-21-5. Renewal of a Certificate of Registration.

(1)(a) The landowner or landowner association may renew the certificate of registration for the CWMU by completing and submitting a renewal application, CWMU authorization sales report and all nonrefundable handling and application fees in accordance with the fee schedule.

(b) The renewal application must be submitted at least 60 days prior to the applicable seasons.

(2) Any changes from the previous year's certificate of registration must be indicated on the renewal application.

(3)(a) If the landowner or landowner association requests additional land to be included in the CWMU, the application must contain the dated signature of each additional landowner, the county identification tax numbers of the additional land, and two 1:100,000 scale BLM Surface Management Status maps showing the new proposed interior and exterior boundaries.

(b) If the landowner or landowner association requests land to be withdrawn from the CWMU, the application must include a copy of the previously submitted petition with the appropriate landowners' signatures deleted and two 1:100,000 scale BLM Surface Management Status maps showing the land to be withdrawn and the new proposed interior and exterior boundaries.

R657-21-6. Cooperative Wildlife Management Unit Agents.

(1) A landowner or landowner association may appoint one CWMU agent per 100 acres up to a maximum of 30 agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent shall wear or each agent shall possess a form of identification prescribed by the Wildlife Board, which indicates that the person is a CWMU agent.

(3) A CWMU agent may refuse entry onto enrolled private land within a CWMU to any person, except the landowner, landowner association members and landowner association operators, who:

(a) does not have a CWMU authorization;

(b) endangers, or has endangered, human safety;

(c) damages, or has damaged, property within the CWMU;

or

(d) fails, or has failed to, comply with reasonable guidelines and rules of the landowner or landowner association.

R657-21-7. Cooperative Wildlife Management Unit Authorizations.

(1) At least 50% of the CWMU authorizations shall be offered for sale to the general public at the times and places designated on the application for the certificate of registration.

(2) Cooperative Wildlife Management Unit Authorizations may not be sold more than 15 days before the start of the first applicable hunting season.

(3) The division shall provide, to the public, a complete list of the current year's CWMUs, wildlife to be hunted, dates, time, place and number of CWMU authorizations for public sale at least 15 days before the first applicable hunting season.

(4) A CWMU authorization entitles the holder to hunt only small game and waterfowl within the CWMU as specified on the CWMU authorization.

R657-21-8. Cooperative Wildlife Management Unit Authorization Numbers.

(1)(a) The division and landowner or landowner association, acting jointly, shall determine the number of CWMU authorizations available for each CWMU.

(b) If the division and the landowner or landowner association disagree over the number of CWMU authorizations, the Wildlife Board may mediate and determine the number of

CWMU authorizations to be issued.

(2)(a) The division and the landowner or landowner association, acting jointly, shall determine the cost of the CWMU authorizations.

(b) Cooperative Wildlife Management Unit Authorization fees should not be so prohibitively expensive that buyers resist purchase of the CWMU authorizations available for general public sale.

R657-21-9. Season Dates.

Season dates for hunting on a CWMU shall be within the general statewide season dates for each small game and waterfowl species as specified in the annual proclamations of the Wildlife Board for taking upland game and waterfowl.

R657-21-10. Bag and Possession Limits.

Bag and possession limits on a CWMU shall be the same as the bag and possession limits for each small game and waterfowl species as specified in the annual proclamations of the Wildlife Board for taking upland game and waterfowl.

R657-21-11. Rights-of-Way.

(1) Each landowner or landowner association shall:

(a) clearly post all boundaries of the CWMU every 1,320 feet:

(i) including all corners, roads, trails, gates, and rights-of-way entering the unit;

(ii) with signs provided by the division; and

(iii) provide a written copy of guidelines and maps of the CWMU to each CWMU authorization holder.

(2) A landowner or landowner association may not restrict established public access to public or private land that is enclosed by the CWMU.

R657-21-12. Habitat Improvement.

(1) The Wildlife Board encourages landowners or landowner associations to improve wildlife populations by developing wildlife habitat on their lands using some of the funds received from the CWMU authorization sales.

(2)(a) The division may provide technical assistance, seed and seedlings, species specific habitat information and wildlife stock, and may cooperate in water development projects for wildlife after the landowner or landowner association has written an approved Wildlife Habitat Management Plan.

(b) The Wildlife Habitat Management Plan may be in the form of a memorandum of understanding between the landowner or landowner association and the division.

KEY: wildlife, small game, wildlife law

June 1, 2010

Notice of Continuation March 9, 2010

23-23-3

R657. Natural Resources, Wildlife Resources.**R657-53. Amphibian and Reptile Collection, Importation, Transportation and Possession.****R657-53-1. Purpose and Authority.**

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, transportation, possession, and propagation of amphibians and reptiles.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, additional regulation is provided in R657-40. Where a more specific provision has been adopted, that provision shall control.

(4) Specific dates, species, areas, number of pre-authorized certificates of registration, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for amphibians and reptiles.

(5) Amphibians and reptiles lawfully collected from wild populations in Utah and thereafter possessed remain the property of the state for the life of the animal pursuant to Section 23-13-3. The state does not assert ownership interest in lawfully possessed, captive-bred amphibians and reptiles, but does retain jurisdiction to regulate the importation, possession, propagation and use of such animals pursuant to Title 23 of the Utah Code and this rule.

(6) This rule does not apply to division employees acting within the scope of their assigned duties.

R657-53-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2) "Amphibian" means animals from the Class of Amphibia, including hybrid species or subspecies of amphibians and viable embryos or gametes of species or subspecies of amphibians.

(3) "Captive-bred" means any legally-obtained amphibian or reptile, for which fertilization and birth occurred in captivity, has spent its entire life in captivity, and is the offspring of legally obtained progenitors.

(4) "Certificate of registration" means a document issued under the Wildlife Resources Code, or any other rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit or tag.

(5) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of an amphibian or reptile, as provided in Rule R58-1.

(6) "Collect" means to take, catch, capture, salvage, or kill any free-roaming amphibian or reptile within Utah.

(7) "Commercial use" means any activity through which a person in possession of an amphibian or reptile:

(a) receives any consideration for the amphibian or reptile or for a use of the amphibian or reptile, including nuisance control; or

(b) expects to recover all or any part of the cost of keeping the amphibian or reptile through selling, bartering, trading, exchanging, breeding, or other use, including displaying the amphibian or reptile for entertainment, advertisement, or business promotion.

(8) "Controlled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(9) "Den" means any place where reptiles congregate for

winter hibernation or brumation.

(10) "Educational use" means the possession and use of an amphibian or reptile for conducting educational activities concerning wildlife and wildlife-related activities.

(11) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection authorizing the importation of an amphibian or reptile into Utah.

(12) "Export" means to move or cause to move any amphibian or reptile from Utah by any means.

(13) "Import" means to bring or cause an amphibian or reptile to be brought into Utah by any means.

(14) "Legally obtained" means to acquire through collection, trade, barter, propagation or purchase with supporting written documentation, such as applicable certificate of registration, collection permit, license, or sales receipt in accordance with applicable laws. Documentation must include the date of the transaction; the name, address and phone number of the person or organization relinquishing the animal; the name, address and phone number of the person or organization obtaining the animal; the scientific name of the animal acquired; and a description of the animal.

(15) "Native species" means any species or subspecies of amphibian or reptile that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(16) "Naturalized species" means any species or subspecies of amphibian or reptile that is not native to Utah but has established a wild, self-sustaining population in Utah.

(17) "Noncontrolled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses no significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(18) "Nonnative species" means a species or subspecies of amphibian or reptile that is not native to Utah and has not established a wild, self-sustaining population in Utah.

(19) "Personal use" means the possession and use of an amphibian or reptile for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, or any other use.

(20) "Possession" means to physically retain or to exercise dominion or control over an amphibian or reptile.

(21) "Pre-authorized certificate of registration" means a certificate of registration that:

(a) meets the criteria established in Subsection R657-53-11(1)

(b) has been approved by the division; and

(c) is available for issuance.

(22) "Prohibited species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with Sections R657-53-23(1)(a) or R657-53-19.

(23) "Propagation" means the mating of a male and female amphibian or reptile in captivity.

(24) "Reptile" means animals from the Class of Reptilia, including hybrid species or subspecies of reptiles and viable embryos or gametes of species or subspecies of reptiles.

(25) "Scientific use" means the possession and use of an amphibian or reptile for conducting bona fide scientific research that is directly or indirectly beneficial to wildlife or the general public.

(26) "Transport" means to be moved or cause to be moved,

any amphibian or reptile within Utah by any means.

(27) "Turtle" means all animals commonly known as turtles, tortoises and terrapins, and all other animals of the Order Testudinata, Class Reptilia.

(28) "Wild population" means native or naturalized amphibians or reptiles living in nature including progeny from a gravid female where fertilization occurred in the wild and birth occurred within six months of collection.

(29) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

R657-53-3. Liability.

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, and possession of the authorized amphibian or reptile and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing amphibians or reptiles.

R657-53-4. Animal Welfare.

(1) Any amphibian or reptile held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including humane handling, care, confinement, transportation, and feeding of the amphibian or reptile.

(2) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any amphibian or reptile.

R657-53-5. Collection, Importation, and Possession of Threatened and Endangered Species.

(1) Any amphibian or reptile listed by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to the federal Endangered Species Act is prohibited from collection, importation, possession, or propagation except:

(a) The division may authorize the collection, importation, possession, or propagation of a threatened or endangered species under the criteria set forth in this rule for controlled species where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity; or

(b) A person may import, possess, transfer, or propagate captive-bred eastern indigo snakes (*Drymarchon couperi*) without a certificate of registration where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity.

R657-53-6. Release of an Amphibian or Reptile to the Wild -- Capture or Disposal of Escaped Wildlife.

(1) Pursuant to Section 23-13-14, a person may not release from captivity any amphibian or reptile without first obtaining authorization from the division.

(2)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live amphibian or reptile that escapes from captivity.

(b) The division may retain custody of any recaptured

amphibian or reptile until the costs of recapture or care have been paid by its owner or keeper.

R657-53-7. Inspection of Documentation.

A conservation officer or any other peace officer may require any person engaged in activities covered by this rule to exhibit any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession.

R657-53-8. Certificate of Registration Required.

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, possessing, or propagating any amphibian or reptile or their parts as provided in rule and the proclamations of the Wildlife Board for amphibians and reptiles, except as otherwise provided by the Wildlife Board or rules of the Wildlife Board.

(b) A certificate of registration is not required:

(i) to collect, import, transport, or possess any amphibian or reptile classified as noncontrolled, except as provided in Subsections R657-53-26(1)(c), R657-53-27(5) and R657-53-28(7); or

(ii) to export any species or subspecies of amphibian or reptile from Utah, provided that the amphibian or reptile is held in legal possession and importation into the destination state is lawful.

(c) An application for an amphibian or reptile classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the amphibian or reptile meets the criteria provided in Subsections R657-53-23(1)(a), R657-53-24(c)(i) or R657-53-19.

(d) Pre-authorized certificates of registration may be issued for collection and the resulting possession of amphibians and reptiles classified as controlled for collection pursuant to R657-53-13.

(2)(a) Certificates of registration expire as designated on the certificate of registration.

(b) Certificates of registration are not transferable.

(c) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall end upon the representative's discontinuation of association with that entity.

(d) Certificates of registration do not provide the holder with any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(3) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the amphibian or reptile.

(5)(a) Upon or before the expiration date of a certificate of registration, the holder must renew an existing or apply for a new certificate of registration to continue the activity.

(b) The division shall use the criteria provided in Section R657-53-11 in determining whether to issue a certificate of registration.

(c) If an application is not made by the expiration date, a live or dead amphibian or reptile held in possession under the expired certificate of registration shall be considered unlawfully held.

(d) If an application for a new certificate of registration is submitted before the expiration date, the existing certificate of

registration shall remain valid while the application is pending.

(6) Failure to submit timely, accurate, or valid reports as required under this rule or the certificate of registration may disqualify a person from obtaining a new certificate of registration.

(7) A certificate of registration may be suspended as provided in Section 23-19-9 and Rule R657-26.

R657-53-9. Application Procedures -- Fees.

(1)(a) Applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) The application may require up to 45 days for review and processing.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Legal tender in the correct amount must accompany the application.

(b) The certificate of registration fee includes a nonrefundable handling fee.

(c) Fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies upon request if, in the opinion of the division, the activity is significantly beneficial to the division, wildlife, or wildlife management.

R657-53-10. Retroactive Effect on Possession.

(1) A person lawfully possessing an amphibian or reptile prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that amphibian or reptile where the amphibian or reptile's classification has changed hereunder from noncontrolled to controlled or prohibited, or from controlled to prohibited.

(2) The certificate of registration shall be obtained within six months of the reclassification, or possession of the amphibian or reptile thereafter shall be unlawful.

(3) The certificate of registration for a species where the classification has changed from noncontrolled to controlled shall be issued for the life of the animal.

(4) The certificate of registration for a species where the classification has changed from noncontrolled or controlled to prohibited shall be renewed annually for the life of the animal.

(5) The division may require annual reporting.

R657-53-11. Issuance Criteria.

(1) The following factors shall be considered before the division may issue a certificate of registration:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife and other animals; and

(c) ecological and environmental impacts.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance of a certificate of registration for a scientific use of an amphibian or reptile:

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including the requisite education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the amphibian or reptile, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance of a certificate of registration for an educational use of an amphibian or reptile:

(a) the objectives and structure of the educational program; and

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(4) The division may deny issuing or reissuing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that, when considered with the functions and responsibilities of collecting, importing, possessing or propagating an amphibian or reptile, bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board; or

(c) the applicant misrepresented or failed to disclose material information required in connection with the application.

(d) The division may deny issuing or renewing a certificate of registration to an applicant where holding the amphibian or reptile at the proposed location violates federal, state or local laws.

(5) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(6) An appeal of the denial of an application may be made as provided in Section R657-53-20.

R657-53-12. Amendment to Certificate of Registration.

(1)(a) If material circumstances change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial applications provided in Section R657-53-11, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-53-20.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) An amphibian or reptile or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

R657-53-13. Pre-authorized Certificates of Registration for Personal Use.

(1) Pre-authorized certificates of registration may only be issued for collection and the resulting possession for personal use of amphibians and reptiles classified as controlled for collection, as provided in this rule and the proclamation of the Wildlife Board.

(2) Pre-authorized certificates of registration shall be held to all conditions established in R657-53-8.

(3)(a) The criteria established in R657-53-11(1) shall be

utilized to determine if pre-authorized certificates of registration shall be approved and issued.

(b) The criteria shall be applied to all amphibians and reptiles classified as controlled for collection.

(c) Pre-authorized certificates of registration shall be approved and issued only when the R657-53-11(1) criteria have been evaluated by the division and issuance found consistent with the criteria.

(4)(a) Applications for pre-authorized certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City.

(i) Applications for pre-authorized certificates of registration shall be accepted during the second full week of January and must be received by the Salt Lake Office by 5 p.m. Friday of that week.

(ii) Applications received before the second full week in January will not be accepted.

(iii) If necessary, a drawing will be held for those species that have more applications than available pre-authorized certificates of registration.

(iv) Remaining pre-authorized certificates of registration will be available after the second full week of January on a first-come, first-served basis.

(v) A person may not apply for or obtain more than one pre-authorized certificate of registration for each available species in a calendar year.

(vi) If available, pre-authorized certificates of registration shall be issued within five business days beginning the Monday after the second full week in January.

(vii) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be rejected.

(b)(i) Legal tender in the correct amount must accompany the application.

(ii) The pre-authorized certificate of registration fee includes a nonrefundable handling fee.

(c) Applications for pre-authorized certificates of registration may be denied as provided in R657-53-11(4).

(5)(a) Pre-authorized certificates of registration are not transferable, nor may they be amended to change collection area, species, bag limits, or dates.

(b) A holder of a pre-authorized certificate of registration shall notify the division within 30 days of any change in mailing address.

(c) An amphibian or reptile, or activities authorized by a certificate of registration may not be held or conducted at any location not specified on the certificate of registration without prior written permission from the division.

(6) Specific dates, species, areas, number of pre-authorized certificates of registration approved, and bag limits shall be published in the proclamation of the Wildlife Board for amphibians and reptiles.

(7)(a) Holders of a pre-authorized certificate of registration must report collection success or lack thereof to the division before the expiration date of the pre-authorized certificate of registration.

(b) The division shall issue a possession certificate of registration for the amphibian or reptile collected under the pre-authorized certification of registration for the life of the animal.

(c) Annual reporting to the division on the status of the animal is required or the possession certificate of registration becomes invalid.

R657-53-14. Records and Reports.

(1)(a) From the date of issuance of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation pursuant to applicable sections of this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons with whom any amphibian or reptile has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for five years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

R657-53-15. Transfer of Possession.

(1) Any person who lawfully possesses an amphibian or reptile classified as prohibited or controlled may transfer possession of that amphibian or reptile only to a person who has first applied for and obtained a certificate of registration for that amphibian or reptile from the division, except as provided in Subsection (3).

(2) The division may issue a certificate of registration granting the transfer and possession of an amphibian or reptile only if the applicant/transferee meets the issuance criteria provided in Section R657-53-11.

(3) Upon the death of a certificate of registration holder, a legally-obtained and possessed amphibian or reptile may pass to a successor, and a certificate of registration will be issued to the successor provided the amphibian or reptile poses no detrimental impact to community safety and the successor is qualified to handle the amphibian or reptile.

R657-53-16. Violations.

(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

R657-53-17. Certification Review Committee.

(1) The division shall establish a Certification Review Committee which shall be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of amphibians or reptiles;

(ii) appeals of certificates of registration; and

(iii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(2) The committee shall consist of the following individuals:

(a) the director or the director's designee who shall represent the director's office and shall act as chair of the committee;

(b) the chief of the Aquatic Section;

(c) the chief of the Wildlife Section;

(d) the chief of the Administrative Services Section;

(e) the chief of the Law Enforcement Section;

(f) the state veterinarian or his designee; and

(g) a person designated by the Department of Health.

(3) The division shall require a fee for the submission of a request provided in Section R657-53-18 and R657-53-19.

R657-53-18. Request for Species Reclassification.

(1) A person may make a request to change the classification of a species or subspecies of amphibian or reptile provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

(3)(a) The application shall include:

- (i) the petitioner's name, address, and phone number;
- (ii) the species or subspecies for which the application is made;
- (iii) the name of all interested parties known by the petitioner;
- (iv) the current classification of the species or subspecies;
- (v) a statement of the facts and reasons forming the basis for the reclassification; and
- (vi) copies of scientific literature or other evidence supporting the change in classification.

(b) In addition to the information required under Subsection (a), the petitioner must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(4)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.

(b) The committee shall send a copy of its recommendation to the petitioner and other interested parties specified on the application.

(5)(a) At the next available Wildlife Board meeting the Wildlife Board shall:

- (i) consider the committee recommendation; and
- (ii) any information provided by the petitioner or other interested parties.

(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-53-11(1).

(6) A change in species classification shall be made in accordance with Title 63G, Chapter 4, Administrative Rulemaking Act.

(7) A request for species reclassification shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-19. Request for Variance.

(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of an amphibian or reptile classified as prohibited under this rule by submitting a request for variance to the Certification Review Committee.

(2)(a) A request for variance shall include the following:

- (i) the name, address, and phone number of the person making the request;
- (ii) the species or subspecies of the amphibian or reptile and associated activities for which the request is made; and
- (iii) a statement of the facts and reasons forming the basis for the variance.

(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.

(4) At the next available Wildlife Board meeting the Wildlife Board shall:

- (a) consider the committee recommendation; and
- (b) any information provided by the person making the request.

(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-53-11.

(b) If the request applies to a broad class of persons and not to unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.

(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request

considered necessary for that person to maintain the standards upon which the variance is made.

(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request.

(7) A request for variance shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-20. Appeal of Certificate of Registration Denial.

(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.

(2) The request must be made within 30 days after the date of the denial.

(3) The request shall include:

- (a) the name, address, and phone number of the petitioner;
- (b) the date the request was mailed;
- (c) the species or subspecies of the amphibian or reptile and the activity for which the application was made; and
- (d) supporting facts and other evidence applicable to resolving the issue.

(4) The committee shall review the request within a reasonable time after it is received.

(5) Upon reviewing the application and the reasons for its denial, the committee may:

- (a) overturn the denial and approve the application; or
- (b) uphold the denial.

(6) The committee may overturn a denial if the denial was:

- (a) based on insufficient information;
- (b) inconsistent with prior action of the division or the Wildlife Board;
- (c) arbitrary or capricious; or
- (d) contrary to law.

(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the petitioner specifying the reasons for its decision.

(b) The notice shall include information that a person may seek Wildlife Board review of that decision.

(8)(a) If the committee upholds the denial, the petitioner may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.

(b) The request must include the information provided in Subsection (3).

(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.

(b) The Wildlife Board may:

- (i) overturn the denial and approve the application; or
- (ii) uphold the denial.

(c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.

(10) An appeal contesting initial division determination of eligibility for a certificate of registration shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-21. Prohibited Collection Methods.

(1) Amphibians and reptiles may not be collected using any method prohibited in this rule and the proclamations of the Wildlife Board except as provided by a certificate of registration or the Wildlife Board.

(a) Lethal methods of collection are prohibited except as provided in Subsections R657-53-27(6) and R657-53-28(6), (8), and (9).

(b) The destruction of habitats such as breaking apart of

rocks, logs or other shelters in or under which amphibians or reptiles may be found is prohibited.

(c) The use of winches, auto jacks, hydraulic jacks, crowbars and pry bars are prohibited.

(d) The use of gasoline or other potentially toxic substance is prohibited.

(e) The use of firearms, airguns or explosives is prohibited.

(f) The use of electrical or mechanical devices, or smokers is prohibited except as provided in Subsection (2)(b).

(g) The use of traps including pit fall traps, can traps, or funnel traps is prohibited.

(h) The use of fykes, seines, weirs, or nets of any description are prohibited except as provided in Subsection (2)(b).

(2)(a) Any logs, rocks, or other objects turned over or moved must be replaced in their original position.

(b) Dip nets less than 24 inches in diameter, snake sticks, and lizard nooses may be used.

R657-53-22. Personal Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess a live amphibian or reptile for personal use only as provided in Subsection (a), (b) or (c).

(a) Certificates of registration are not issued for the collection and possession of any live amphibian or reptile classified as prohibited for collection and possession, except as provided in R657-53-19.

(b) A certificate of registration is required for collection and possession of any live amphibian or reptile classified as controlled for collection and possession, except as otherwise provided by the Wildlife Board.

(c) A certificate of registration is not required for collection and possession of any live amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(2) A person may collect and possess a dead amphibian or reptile or its parts for personal use only as provided in Subsections (a), (b) or (c).

(a) A person may collect and possess a dead amphibian or reptile or its parts classified as controlled for collection and possession without a certificate of registration as provided in Subsections (i) and (ii).

(i) The specimen must be frozen and submitted to the division by appointment within 30 days of collection; and

(ii) The specimen must be labeled with the species name, salvage date, salvage location, Universal Transverse Mercator (UTM) location coordinates and name of person collecting the dead amphibian or reptile.

(b) A certificate of registration is required for collection and possession of a dead amphibian or reptile or its parts classified as controlled for collection and possession where the dead amphibian or reptile or its parts remains in personal possession, except as otherwise provided by the Wildlife Board.

(i) A certificate of registration is not required for collection and possession of any dead amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) Collection and possession of any dead amphibian or reptile or its parts classified as noncontrolled for collection and possession, which remain in personal possession will count against collection and possession limits.

(c) A dead amphibian or reptile or its parts classified as prohibited for collection and possession may not be collected and possessed without a certificate of registration issued by the division for collection and possession of the specimen.

(3) A person may temporarily handle for personal use live amphibians or reptiles classified as noncontrolled and controlled for collection and possession without a certificate of registration only as provided in Subsections (a) through (d).

(a) An amphibian or reptile may be held for up to 15 minutes in a non-harmful way for the purpose of photography, noninvasive data collection and moving out of harm's way;

(i) For the purposes of this Subsection, noninvasive data collection means the collection of external measurements, specimen weights, external meristics, and sex determination which does not involve the use of probes or other instruments which enter the body of the animal;

(b) The amphibian or reptile cannot be moved more than 60 feet from the location found;

(c) The amphibian or reptile can be placed in any container, bag or device which confines the animal so it may be transported; and

(d) The amphibian or reptile must be released immediately when directed to do so by a division employee.

(4) A certificate of registration is required for a person to handle live amphibians or reptiles classified as prohibited for collection and possession.

(5) A person may import and possess a live or dead amphibian or reptile or its parts for personal use only as provided in subsection (b), (c) and (d).

(a) Certificates of registration are not issued for the importation and possession of any live or dead amphibian or reptile or its parts classified as prohibited for importation and possession, except as provided in Subsection (d) and R657-53-19.

(b) A certificate of registration is required for importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for importation and possession, except as otherwise provided by the Wildlife Board and subsection (i).

(i) Prior to importation, a certificate of registration shall be issued for the importation and the resulting possession of any live amphibian or reptile for personal use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) Legal documentation of the acquisition of the amphibian or reptile shall be maintained as determined in the certificate of registration.

(iii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iv) Imported native and naturalized species shall not count toward the possession limit.

(c) A certificate of registration is not required for importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for importation and possession.

(i) Legal documentation of the acquisition of the amphibian or reptile shall be maintained for the life of the animal or the time the animal is in possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(d) Notwithstanding subsection (5)(a) or (b), a person may import and possess any dead amphibian or reptile or its parts classified as prohibited or controlled, except as provided in Section R657-53-5, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag, certificate of registration, bill of sale, or invoice is available for

inspection upon request.

R657-53-23. Scientific, or Educational Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for scientific or educational use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit educational or scientific institution, or a person involved in wildlife research through an eligible institution to collect and possess or import and possess a live or dead amphibian or reptile classified as prohibited for collection and possession or importation and possession if, in the opinion of the division, the scientific or educational use is beneficial to wildlife and significantly benefits the general public without material detriment to wildlife.

(b) A certificate of registration is required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for collection and possession or importation and possession for scientific or educational use, except as otherwise provided by the Wildlife Board.

(i) Prior to importation, a certificate of registration shall be issued for the importation and resulting possession of any live amphibian or reptile for scientific or educational use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(c)(i) A certificate of registration is not required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for collection and possession or importation and possession for scientific or educational use, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

R657-53-24. Commercial Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess a live amphibian or reptile for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in this rule or a certificate of registration.

(2) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for commercial use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a)(i) A person may import and possess a live amphibian or reptile classified as non-controlled for importation and possession for a commercial use or a commercial venture, except as provided in subsection (ii)

(ii) A native or naturalized species or subspecies of amphibian or reptile may not be sold or traded unless it

originated from a captive-bred population.

(iii) Complete and accurate records for native or naturalized species must be maintained and available for inspection for five years from the date of the transaction, documenting the date, name, address, and telephone number of the person from whom the amphibian or reptile has been obtained.

(iv) Complete and accurate records must be maintained and available for inspection for five years from the date of the transfer, documenting the date, name, address and certificate of registration number if applicable of the person receiving the amphibian or reptile.

(b)(i) A person may not import and possess a live amphibian or reptile classified as controlled for importation and possession for a commercial use or commercial venture without first obtaining a certificate of registration.

(ii) A certificate of registration will not be issued to sell or trade a native or naturalized species of amphibian or reptile unless it originates from a captive-bred population.

(iii) It is unlawful to transfer a live amphibian or reptile classified as controlled for collection and possession or importation and possession to a person who does not have a certificate of registration to possess the amphibian or reptile, except as follows:

(A) the amphibian or reptile is captive-bred;

(B) the transferee is not domiciled in Utah;

(C) the transferee is exporting the amphibian or reptile out of Utah; and

(D) the transferee follows the transport provisions in Section R657-53-25.

(iv) Complete and accurate records must be maintained by the buyer and the seller for five years from the date of the transaction or transfer, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained and the person receiving the amphibian or reptile.

(v) The records indicated in Subsection (iv) must be made available for inspection upon request of the division.

(c)(i) A certificate of registration will not be issued for importation and possession of a live amphibian or reptile, classified as prohibited for importation and possession for a commercial use or commercial venture, except as provided in Subsection (ii) or R657-53-19.

(ii) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import and possess a live amphibian or reptile classified as prohibited for importation and possession if, in the opinion of the division, the importation and possession for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(iii) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited amphibian or reptile in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

(3) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length (Referenced Federal Register 21 CFR 1240.62).

(4)(a) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess or import and possess any dead amphibian or reptile or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(b) The restrictions in Subsection (a) do not apply to importation and possession of a dead amphibian or reptile sold or traded for educational use.

R657-53-25. Transporting a Live Amphibian or Reptile Through Utah.

A certificate of veterinary inspection is required from the state of origin as provided in Utah Department of Agriculture Rule R58-1 and proof of legal possession must accompany the zoological animal

(1) Any controlled or prohibited amphibian or reptile may be transported through Utah without a certificate of registration if:

(a) the amphibian or reptile remains in Utah no more than 72 hours; and

(b) the amphibian or reptile is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.

(2) Proof of legal possession must accompany the amphibian or reptile.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

R657-53-26. Propagation of Amphibians or Reptiles.

(1) A person may propagate native amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile collected in Utah and classified as controlled for propagation, except as otherwise provided by the Wildlife Board.

(i) All progeny shall be marked as determined in the certificate of registration;

(ii) A report shall be submitted yearly as specified in the certificate of registration;

(iii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iv) Progeny shall not count toward possession limits.

(c) A certificate of registration is required for propagating native amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) A report shall be submitted yearly as specified in the certificate of registration;

(ii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iii) Progeny shall not count toward possession limits.

(2) A person may propagate naturalized amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (d).

(a) Certificates of registration are not issued for the propagation of any naturalized amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any naturalized amphibian or reptile legally collected in Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating any naturalized amphibian or reptile collected in Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for

propagating naturalized amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(3) A person may propagate native amphibians or reptiles that are legally obtained from an instate captive source or imported into Utah and possessed only as provided in Subsection (a) through (d).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile legally obtained from an instate captive source or imported into Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating any native amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for propagating native amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(4) A person may propagate nonnative or naturalized amphibians or reptiles that are legally obtained from an instate captive source or imported into Utah and possessed only as provided in Subsections (a) through (d).

(a) Certificates of registration are not issued for the propagation of any nonnative or naturalized amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any nonnative or naturalized amphibian or reptile legally obtained from an instate captive source or imported into Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating nonnative or naturalized amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for propagating nonnative or naturalized amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(5) Certificates of registration may be denied to an applicant who:

(a) is a non-resident of Utah;

(b) fails to provide and maintain suitable, disease-free facilities and to humanely hold and maintain amphibians or reptiles in good condition;

(c) has been judicially or administratively found guilty of violating the provisions of this rule;

(d) has been convicted of, pleaded no contest to, or entered into a plea in abeyance to any criminal offense that bears a reasonable relationship to the applicant's ability to safely and responsibly collect, import, transport or possess amphibians or reptiles; or

(e) fails to maintain the propagation records and file the annual reports required in this section.

(6) Legally-obtained amphibians or reptiles and their progeny and descendants born in captivity, which are held in possession under the authority of a certificate of registration, remain property of the holder, but are subject to regulation by the division in accordance with the needs for public health, welfare, and safety, and impacts on wildlife.

R657-53-27. Classification and Specific Rules for Amphibians.

(1) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) will be utilized in Subsection (2).

(2) Amphibians are classified as follows:

(a) Frogs are classified as follows:

(i) American bullfrog, Ranidae Family (*Rana catesbeiana*)

is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Canyon treefrog, Hylidae Family (*Hyla arenicolor*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Clawed frog, Pipidae Family (*Xenopus*) (All species)

is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Columbia spotted frog, Ranidae Family (*Rana luteiventris*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Green frog, Ranidae Family (*Rana clamitans*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Lowland leopard frog, Ranidae Family (*Rana yavapaiensis*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Northern leopard frog, Ranidae Family (*Rana pipiens*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Pacific treefrog, Hylidae Family (*Pseudacris regilla*)

is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Relict leopard frog, Ranidae Family (*Rana onca*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Western chorus frog, Hylidae Family (*Pseudacris*

triseriata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(b) Spadefoots are classified as follows:

(i) Great basin spadefoot, Pelobatidae Family (*Spea intermontana*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Mexican spadefoot, Pelobatidae Family (*Spea multiplicata*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Plains spadefoot, Pelobatidae Family (*Spea bombifrons*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(c) Salamanders are classified as follows:

(i) Tiger salamander, Ambystomatidae Family (*Ambystoma tigrinum*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah.

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(d) Toads are classified as follows:

(i) Arizona toad, Bufonidae Family (*Bufo microscaphus*)

is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Cane (marine) toad, Bufonidae Family (*Bufo marinus*)

is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Great Plains toad, Bufonidae Family (*Bufo cognatus*)

is

(A) controlled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Red-spotted toad, Bufonidae Family (*Bufo punctatus*)

is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Western toad, Bufonidae Family (*Bufo boreas*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(t) Woodhouse's toad, Bufonidae Family (*Bufo woodhousii*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations

in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(3)(a) Amphibians classified at the genus or family taxonomic level include all species and subspecies.

(b) Amphibians classified at the species taxonomic level include all subspecies.

(c) Amphibians classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of amphibians not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5)(a) A person must obtain a certificate of registration to collect and possess more than three amphibians of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (6).

(b) A person must obtain a certificate of registration to possess more than nine amphibians in aggregate classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (6).

(6) A person may collect and possess any number of American bullfrogs (*Rana catesbeiana*) or Green frogs (*Rana clamitans*) without a certificate of registration provided they are either killed or released immediately. A person may not transport a live bullfrog or green frog from the point of capture without first obtaining a certificate of registration.

R657-53-28. Classification and Specific Rules for Reptiles.

(1)(i) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) shall be utilized in Subsection (2) for North American species found north of Mexico.

(ii) Common and scientific nomenclature recognized and adopted by C. Mattison in *The Encyclopedia of Snakes* (1999) shall be utilized for all other snakes found in Subsection (2).

(iii) Common and scientific nomenclature recognized and adopted by O'Shea and Halliday in *Smithsonian Handbooks: Reptiles and Amphibians* (2002) shall be utilized for the Gharial found in subsection (2).

(2) Reptiles are classified as follows:

(a) Crocodiles are classified as follows:

(i) Alligators and caimans, Alligatoridae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Crocodiles, Crocodylidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah; and

(iii) Gharial, Gavialidae Family (*Gavialis gangeticus*) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah.

(b) Lizards are classified as follows:

(i) Beaded lizard, Helodermatidae Family, (*Heloderma horridum*) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Chuckwalla, Iguanidae Family (*Sauromalus*) (All species) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession and prohibited for propagation of individuals legally obtained outside of Utah;

(iii) Common lesser earless lizard, Phrynosomatidae Family (*Holbrookia maculata*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and

propagation of individuals legally obtained outside of Utah;

(iv) Common side-blotched lizard, Phrynosomatidae Family (*Uta stansburiana*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert horned lizard, Phrynosomatidae Family (*Phrynosoma platyrhinos*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert iguana, Iguanidae Family (*Dipsosaurus dorsalis*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession, and prohibited for propagation of individuals legally obtained outside of Utah;

(vii) Desert spiny lizard, Phrynosomatidae Family (*Sceloporus magister*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Eastern collared lizard, Crotaphytidae Family (*Crotaphytus collaris*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Gila monster, Helodermatidae Family (*Heloderma suspectum*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Basin collared lizard, Crotaphytidae Family (*Crotaphytus bicinctores*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Great Basin fence lizard, Phrynosomatidae Family (*Sceloporus occidentalis longipes*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Great Basin skink, Scincidae Family (*Eumeces skiltonianus utahensis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Great Basin Whiptail, Teiidae Family (*Aspidoscelis tigris tigris*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Greater short-horned lizard, Phrynosomatidae Family (*Phrynosoma hernandesi*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Long-nosed leopard lizard, *Crotaphytidae* Family (*Gambelia wislizenii*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Northern plateau lizard, *Phrynosomatidae* Family (*Sceloporus undulatus elongatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Northern sagebrush lizard, *Phrynosomatidae* Family (*Sceloporus graciosus graciosus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (5);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Ornate tree lizard, *Phrynosomatidae* Family (*Urosaurus ornatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Plateau striped whiptail, *Teiidae* Family (*Aspidoscelis velox*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Plateau tiger whiptail, *Teiidae* Family (*Aspidoscelis tigris septentrionalis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Southern plateau lizard, *Phrynosomatidae* Family (*Sceloporus undulatus tristichus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Utah banded gecko, *Gekkonidae* Family (*Coleonyx variegatus utahensis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Utah night lizard, *Xantusiidae* Family (*Xantusia vigilis utahensis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Variable (many-lined) skink, *Scincidae* Family (*Eumeces multivirgatus epipleurotus*)

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Western zebra-tailed lizard, *Phrynosomatidae* Family (*Callisaurus draconoides rhodostictus*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxvi) Yucca night lizard, *Xantusiidae* Family (*Xantusia vigilis vigilis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(c) Snakes are classified as follows:

(i) Bird Snake, *Colubridae* Family (*Thelotornis*) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Boomslang, *Colubridae* Family (*Dispholidus typus*) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Burrowing asps, *Atractaspidae* Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) California kingsnake, *Colubridae* Family (*Lampropeltis getula californiae*) is

(A) controlled for collection, possession and noncontrolled for propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert glossy snake, *Colubridae* Family (*Arizona elegans eburnata*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert nightsnake, *Colubridae* Family (*Hypsiglena torquata deserticola*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Desert striped whipsnake, *Colubridae* Family (*Masticophis taeniatus taeniatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Desert gophersnake, *Colubridae* Family (*Pituophis catenifer deserticola*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Great Basin rattlesnake, *Viperidae* Family (*Crotalus oreganus lutosus*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Plains ratsnake, *Colubridae* Family (*Elaphe emoryi*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Groundsnake, *Colubridae* Family (*Sonora semiannulata*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Keelback, *Colubridae* Family (*Rhabdophis*) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Midget faded rattlesnake, Viperidae Family (*Crotalus oreganus concolor*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Mojave rattlesnake, Viperidae Family (*Crotalus scutulatus*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Mojave patch-nosed snake, Colubridae Family (*Salvadora hexalepis mojaviensis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Painted desert glossy snake, Colubridae Family (*Arizona elegans philipi*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Pit vipers, Viperidae Family (All species) are

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Prairie rattlesnake, Viperidae Family (*Crotalus viridis*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Proteroglyphous snakes, Australian spp., cobras, coral snakes, kraits, and their allies, Elapidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Red racer (Coachwhip), Colubridae Family (*Masticophis flagellum piceus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Regal ring-necked snake, Colubridae Family (*Diadophis punctatus regalis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Rubber boa, Boidae Family (*Charina bottae*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Sidewinder, Viperidae Family (*Crotalus cerastes*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Smith's black-headed snake, Colubridae Family (*Tantilla hobartsmithi*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Smooth greensnake, Colubridae Family (*Opheodrys vernalis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvi) Sonoran lyresnake, Colubridae Family (*Trimorphodon biscutatus lambda*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvii) Speckled rattlesnake, Viperidae Family (*Crotalus mitchellii*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxviii) Spotted leaf-nosed snake, Colubridae Family (*Phyllorhynchus decurtatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxix) Utah milksnake, Colubridae Family (*Lampropeltis triangulum taylori*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxx) Utah mountain kingsnake, Colubridae Family (*Lampropeltis pyromelana infralabialis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxi) Utah threadsnake, Leptotyphlopidae Family (*Leptotyphlops humilis utahensis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxii) Valley gartersnake, Colubridae Family (*Thamnophis sirtalis fitchi*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiii) Wandering gartersnake, Colubridae Family (*Thamnophis elegans vagrans*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiv) Western black-necked gartersnake, Colubridae Family (*Thamnophis cyrtopsis cyrtopsis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxv) Western long-nosed snake, Colubridae Family (*Rhinocheilus lecontei lecontei*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxxvi) Western yellow-bellied racer, Colubridae Family (*Coluber constrictor mormon*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(d) Turtles are classified as follows:

(i) Alligator snapping turtle, Chelydridae Family (*Macrochelys temminckii*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Common snapping turtle, Chelydridae Family (*Chelydra serpentina*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Desert tortoise, Testudinidae Family (*Gopherus agassizii*) is

(A) prohibited for collection, and propagation and controlled for possession of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Painted turtle, Emydidae Family (*Chrysemys picta*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(v) Red-eared slider, Emydidae Family (*Trachemys scripta elegans*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(vi) Spiny softshell, Trionychidae Family (*Apalone spinifera*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(3)(a) Reptiles classified at the genus or family taxonomic level include all species and subspecies.

(b) Reptiles classified at the species taxonomic level include all subspecies.

(c) Reptiles classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of reptiles not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5) A person may not:

(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a certificate of registration from the division; or

(b) indiscriminately kill any reptile.

(6)(a) Great Basin rattlesnakes, *Crotalus oreganus lutosus*, may be killed without a certificate of registration only for reasons of human safety.

(b) The carcass or its parts of a Great Basin rattlesnake killed pursuant to Subsection (a) may be retained for personal use or possessed.

(7)(a) A person must obtain a certificate of registration to collect more than three reptiles of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (8).

(b) A person must obtain a certificate of registration to possess more than nine reptiles of each species or more than 56 in aggregate which are classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (8).

(8) In a calendar year, a person may collect and possess for personal use 25 common side-blotched lizards (*Uta stansburiana*), 25 northern sagebrush lizards (*Sceloporus graciosus graciosus*), and 25 wandering gartersnakes (*Thamnophis elegans vagrans*), without obtaining a certificate of registration or counting against the aggregate possession limit.

(9)(a) A person may collect and possess any number of common snapping turtles (*Chelydra serpentina*), alligator turtles (*Macrochelys temminckii*) or spiny softshell (*Apalone spinifera*) turtles without a certificate of registration provided they are either killed or released immediately upon removing them from the point of capture.

(b) A person may not transport a live common snapping turtle, alligator turtle or spiny softshell turtle from the point of capture from which it was collected without first obtaining a certificate of registration.

KEY: wildlife, import restrictions, amphibians, reptiles
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 23-20-3
 23-13-14

R657. Natural Resources, Wildlife Resources.**R657-55. Wildlife Convention Permits.****R657-55-1. Purpose and Authority.**

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing wildlife convention permits.

(2) Wildlife convention permits are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities and attracting a regional or national wildlife convention to Utah.

(3) The selected conservation organization will conduct a random drawing at a convention held in Utah to distribute the opportunity to receive wildlife convention permits.

(4) This rule is intended as authorization to issue one series of wildlife convention permits per year beginning in 2007 through 2011 to one qualified conservation organization.

R657-55-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, corporation, foundation, or association founded for the purpose of promoting wildlife conservation.

(b) "Special nonresident convention permit" means one wildlife convention permit for each once-in-a-lifetime species that is only available to a nonresident hunter legally eligible to hunt in Utah.

(c) "Wildlife Convention" means a multi-day event held within the state of Utah that is sponsored by multiple wildlife conservation organizations as their national or regional convention or event that is open to the general public and designed to draw nationwide attendance of more than 10,000 individuals. The wildlife convention may include wildlife conservation fund raising activities, outdoor exhibits, retail marketing of outdoor products and services, public awareness programs, and other similar activities.

(d) "Wildlife Convention Permit" means a permit which:

(i) is authorized by the Wildlife Board to be issued to successful applicants through a drawing or random selection process conducted at a Utah wildlife convention; and

(ii) allows the permittee to hunt for the designated species on the designated unit during the respective season for each species as authorized by the Wildlife Board.

(e) "Wildlife Convention Permit series" means a single package of permits to be determined by the Wildlife Board for:

- (i) deer;
- (ii) elk;
- (iii) pronghorn;
- (iv) moose;
- (v) bison;
- (vi) rocky mountain goat;
- (vii) desert bighorn sheep;
- (viii) rocky mountain bighorn sheep;
- (ix) wild turkey;
- (x) cougar; or
- (xi) black bear.

(f) "Secured Opportunity" means the opportunity to participate in a specified hunt that is secured by an eligible applicant through the drawing process.

(g) "Successful Applicant" means an individual selected to receive a wildlife convention permit through the drawing process.

R657-55-3. Wildlife Convention Permit Allocation.

(1) The Wildlife Board may allocate wildlife convention permits by May 1 of the year preceding the wildlife convention.

(2) Wildlife convention permits shall be issued as a single series to one conservation organization.

(3) The number of wildlife convention permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) a percentage of the permits available to nonresidents in the annual big game drawings matched by a proportionate number of resident permits.

(4) Wildlife convention permits, including special nonresident convention permits, shall not exceed 200 total permits.

(5) Wildlife convention permits designated for the convention each year shall be deducted from the number of public drawing permits.

R657-55-4. Obtaining Authority to Distribute Wildlife Convention Permit Series.

(1) The wildlife convention permit series is issued for a period of five years as provided in Section R657-55-1(4).

(2) The wildlife convention permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife convention in Utah open to the public.

(3) Conservation organizations may apply for the wildlife convention permit series by sending an application to the division July 1 through August 1, 2005.

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife convention will take place and how the wildlife convention permit drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife convention permit series based on:

(a) the business plan for the convention and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife convention.

(7) The Wildlife Board shall make the final assignment of the wildlife convention permit series based on the:

(a) division's recommendation;

(b) benefit to protected wildlife;

(c) historical contribution of the organization, including its constituent entities, to the conservation of wildlife; and

(d) previous performance of the conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife convention permit series must:

(a) require each applicant to verify they possess a current Utah hunting or combination license before allowing them to apply for a convention permit;

(b) select successful applicants for the wildlife convention permits by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(c) allow applicants to apply for the wildlife convention permits without purchasing admission to the wildlife convention;

(d) notify the division of the successful applicant of each wildlife convention permit within 10 days of the applicant's selection;

(e) maintain records demonstrating that the drawing was conducted fairly; and

(f) submit to wildlife convention permit series audits by a division-appointed auditor upon division request.

(9) The division shall issue the appropriate wildlife convention permit to the designated successful applicant after:

(a) completion of the random selection process;

(b) verification of the recipient being found eligible for the permit; and

(c) payment of the appropriate permit fee is received by the division.

(10) The division and the conservation organization receiving the wildlife convention permit series shall enter into a contract, including the provisions outlined in this rule.

(11) If the conservation organization awarded the wildlife convention permit series withdraws before the end of the 5 year period, any remaining co-participants with the conservation organization may be given an opportunity to assume the contract and to distribute the convention permit series consistent with the contract and this rule for the remaining years left in the 5 year period, provided:

(a) The original contracted conservation organization submits a certified letter to the division identifying that it will no longer be participating in the convention.

(b) The partner or successor conservation organization files an application with the division as provided in subsection 4 for the remaining period.

(c) The successor conservation organization submits its application request at least 60 days prior to the next scheduled convention so that the wildlife board can evaluate the request under the criteria in this section.

(d) The Wildlife Board authorizes the successor conservation organization to assume the contract and complete the balance of the 5 year convention permit period.

(12) The division may suspend or terminate the conservation organization's authority to distribute wildlife convention permits at any time during the five year award term for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife convention in Utah, as described in the business plan under R657-55-4(4)(d), in any given year.

R657-55-5. Hunter Application Procedures.

(1) Any hunter legally eligible to hunt in Utah may apply for a wildlife convention permit except that only a nonresident of Utah may apply for a special nonresident convention permit.

(2) Any handling fee assessed by the conservation organization to process applications shall not exceed \$5 per application submitted at the convention.

(3) Applicants must validate their application in person at the wildlife convention to be eligible to participate in the random drawing process, for wildlife convention permits, and no person may submit an application in behalf of another.

(4) Applicants may apply for each individual hunt for which they are eligible.

(5) Applicants may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) Applicants must submit an application for each desired hunt.

(7) Applicants must possess a current Utah hunting or combination license in order to apply for a permit.

R657-55-6. Drawing Procedures.

(1) A random drawing or selection process must be

conducted for each wildlife convention permit.

(2) No preference or bonus points shall be awarded in the drawings.

(3) Waiting periods do not apply, except any person who obtains a wildlife convention permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) No predetermined quotas or restrictions shall be imposed in the application or selection process for wildlife convention permits between resident and nonresident applicants, except that special nonresident convention permits may only be awarded to a nonresident of Utah.

(5) Drawings will be conducted at the close of the convention.

(6) Applicants do not have to be present at the drawing to be awarded a wildlife convention permit.

(7) The conservation organization shall draw twenty five eligible alternates for each wildlife convention permit and provide the division with a finalized list. This list will be maintained by the conservation organization until all permits are issued.

(8) The division shall contact successful applicants by phone or mail, and the conservation organization may post results on a designated website.

R657-55-7. Issuance of Permits.

(1) The division shall provide a wildlife convention permit to the successful applicant as designated by the conservation organization.

(2) The division must provide a wildlife convention permit to each successful applicant, except as otherwise provided in this rule.

(3) The division shall provide each successful applicant a letter indicating the permit secured in the drawing, the appropriate fee owed the division, the date this fee is due, and a postage paid envelope to return payment to the division.

(4) Successful applicants must provide the permit fee payment in full to the division and will be issued the designated wildlife convention permit upon receipt of the appropriate permit fee and providing proof they possess a current Utah hunting or combination license.

(5) Residents will pay resident permit fees and nonresidents will pay nonresident permit fees.

(6) Applicants are eligible to obtain only one permit per species, except as provided in Rule R657-5, but no restrictions apply on obtaining permits for multiple species.

(7) Any successful applicant who fails to satisfy the following requirements will be ineligible to receive the wildlife convention permit and the next drawing alternate for that permit will be selected.

(a) The applicant fails to return the appropriate permit fee in full by the date provided in Subsection (3) or

(b) The applicant did not possess a valid Utah hunting or combination license at the time the convention permit application was submitted and the permit received.

R657-55-8. Surrender or Transfer of Wildlife Convention Permits.

(1)(a) If a person selected to receive a wildlife convention permit is also successful in obtaining a Utah limited entry permit for the same species in the same year or obtaining a general permit for a male animal of the same species in the same year, that person cannot possess both permits and must select the permit of choice.

(b) In the event the secured opportunity is willingly surrendered before the permit is issued, the next eligible

applicant on the alternate drawing list will be selected to receive the secured opportunity.

(c) In the event the wildlife convention permit is surrendered, the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit, and the permit fee will not be refunded, except as provided in Sections 23-19-38 and 23-19-38.2.

(2) If a person is successful in obtaining more than one wildlife convention permit for the same species, the applicant must select the permit of choice and the remaining permit will go to the next eligible applicant on the alternate drawing list.

(3) A person selected by a conservation organization to receive a wildlife convention permit, may not sell or transfer the permit, or any rights thereunder to another person in accordance with Section 23-19-1.

(4) If a person is successful in obtaining a wildlife convention permit but is legally ineligible to hunt in Utah the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit.

R657-55-9. Using a Wildlife Convention Permit.

(1) A wildlife convention permit allows the recipient to:

- (a) take only the species for which the permit is issued;
- (b) take only the species and sex printed on the permit; and
- (c) take the species only in the area and during the season specified on the permit.

(2) The recipient of a wildlife convention permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

KEY: wildlife, wildlife permits

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23-14-19

R657. Natural Resources, Wildlife Resources.**R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective proclamations of the Wildlife Board.

R657-62-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division in order to apply for a hunting permit.

(b) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(c) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include cougar pursuit or bear pursuit.

(d) "Limited entry permit" means any permit obtained for a limited entry hunt,

including conservation permits, convention permits and sportsman permits.

(e)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers;

(C) for a certificate of registration; and

(D) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(f) "Waiting period" means a specified period of time that a person who has obtained a permit must wait before applying for the same permit type.

(g) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(h) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

R657-62-3. Scope of Rule.

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

(a) Dedicated Hunter certificate of registrations;

(b) limited-entry deer;

(c) limited-entry elk;

(d) limited-entry pronghorn;

(e) once-in-a-lifetime;

(f) public cooperative wildlife management unit;

(g) general season deer and youth elk;

(h) bear;

(i) bear pursuit;

(j) antlerless big game;

(k) sandhill crane;

(l) sharp-tail and sage grouse;

(m) swan

(n) cougar;

(o) sportsman; and

(p) turkey.

R657-62-4. Residency Restrictions.

(1) Only a resident may apply for or obtain a resident permit or resident certificate of registration and only a nonresident may apply for or obtain a nonresident permit or nonresident certificate of registration.

(2)(a) To apply for a resident permit or certificate of registration, a person must be a resident at the time of purchase.

(b) The posting date of the drawing shall be considered the purchase date of a permit or certificate of registration issued through a drawing.

R657-62-5. Hunting on Private Lands.

(1) 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. The division does not guarantee access and cannot restore lost opportunity, bonus points, or permit fees when access is denied. Hunters should contact private landowners for permission to access their land prior to applying for a permit. The Division does not have the names of landowners where hunts occur.

R657-62-6. Applications.

(1)(a) Applications are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective proclamation of the Wildlife Board.

(b) The permit fees and handling fees must be paid with a valid debit or credit card.

(c) Any license, permit or certificate of registration issued to a person is invalid where full payment is not remitted to and received by the division.

(d) A person who applies for or obtains a permit or certificate of registration must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

R657-62-7. Group Applications.

(1) When applying as a group all applicants in the group with valid applications and who are eligible to possess the permit or certificate of registration applied for shall receive a permit or certificate of registration where the group is successful in the drawing.

(2) Group members must apply for the same hunt choices. - except for dedicated hunter region choice in certificate of registration application.

(3) When applying as a group, if the available permit or certificate of registration quota is not large enough to accommodate the group size, the group application will not be considered.

R657-62-8. Bonus Points.

(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 limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for;

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative

wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative wildlife management units;

(v) bear;

(vi) antlerless moose;

(vii) cougar; and

(viii) turkey

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications will not be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(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 are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, convention 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.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-9. Bonus Point Forfeiture.

(1) All bonus points accumulated for big game species shall be automatically forfeited upon failing to apply in three consecutive years for any big game permit or bonus point for which the applicant is eligible to receive.

(a) "Big game permit" means for purpose of this subsection any big game hunting permit that a bonus point may be awarded upon unsuccessful application or in lieu of a permit.

(b) Forfeiture may be imposed no sooner than March 1, 2012 after three consecutive years of failing to apply for a big game permit or bonus point.

R657-62-10. Preference Points.

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application of the first-choice hunt when applying for a general buck deer permit; or

(ii) each valid unsuccessful application when applying for an antlerless deer, antlerless elk, or doe pronghorn permit; or

(iii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; and

(iv) doe pronghorn.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) General buck deer preference points are forfeited if a person obtains a first-choice hunt general buck deer permit.

(5) an antlerless deer permit, an antlerless elk permit or doe pronghorn permit through the drawing.

(6) Preference points are not transferable.

(7) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(8)(a) Preference points are tracked using social security numbers or customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-11. Loyalty Points.

(1) Loyalty points are used in the dedicated hunter certificate of registration drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2) A loyalty point is awarded for:

(a) each valid unsuccessful application;

(b) each valid application when applying only for a loyalty point in the dedicated hunter drawing.

(c) successfully completing a three-year enrollment in the dedicated hunter program immediately preceding the application period.

(3)(a) A person may not apply in the drawing for both a loyalty point and a certificate of registration.

(b) A person may not apply for a loyalty point if that person is ineligible to apply for a certificate of registration.

(c) Loyalty points may not be used when obtaining remaining certificates of registration after the dedicated hunter drawing.

(4) Loyalty points are forfeited if a person obtains a

certificate of registration through the drawing.

(5)(a) Loyalty points are not transferable.

(b) Loyalty points shall only be applied to the Dedicated Hunter drawing.

(c) A person may not have more than one loyalty point at any time.

(d) Loyalty points are only valid through the end of the following application period.

(6) Loyalty points are averaged and rounded down to the nearest whole point when two or more applicants apply together on a group application.

(7)(a) Loyalty points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications for three years for the purpose of researching loyalty point records.

(c) Any requests for researching an applicant's loyalty point records must be requested within the time frames provided in Subsection (b).

(d) Any loyalty points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any loyalty points earned that are obtained by fraud, deceit or misrepresentation.

R657-62-12. Corrections, Withdrawals and Resubmitting Applications.

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective proclamation of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit or certificate of registration drawing by the date published in the respective proclamation of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

R657-62-13. Drawing Results.

Applicants may be notified of drawing results by the date prescribed in the respective proclamation of the Wildlife Board.

R657-62-14. License, Permit, Certificate of Registration and Handling Fees.

(1) Unsuccessful applicants will not be charged for a permit or certificate of registration.

(2) The handling fees and hunting or combination license fees are nonrefundable.

(3) All license, permit, certificate of registration and handling fees must be paid with a valid debit or credit card.

R657-62-15. Permits Remaining After the Drawing.

(1) Any permits remaining after the drawing are available on the date published in the respective proclamation on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

R657-62-16. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods do not apply to the purchase of remaining permits sold over the counter except as provided in Section 2.

(2) Waiting periods are incurred as a result of purchasing

remaining permits after the drawing. If a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-62-17. Dedicated Hunter Certificates of Registration.

(1)(a) Applicants for a dedicated hunter certificate of registration must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-38.

(b) Each prospective participant must complete Dedicated Hunter program orientation course annually before submitting an application.

(2) Group applications are accepted. Up to four applicants may apply as a group.

R657-62-18. Lifetime License Permits.

(1) Lifetime License permits shall be issued pursuant to Rule R657-17.

R657-62-19. Big Game.

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by region for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer.

(2) Youth

(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each region are

reserved for youth hunters.

(iii) may not apply as part of any group

(iv) Preference points shall be used when applying.

(c) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(3) Drawing Order

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) youth general buck deer;

(vi) general buck deer and general buck/bull combo;

(vii) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing 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.

(4) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to ten people may apply together for general deer permits

(ii) Up to two youth may apply together for youth general any bull elk permits.

(5) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; and dedicated hunter limited entry deer permits; or

(B) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; and dedicated hunter limited entry elk permits;

or

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) 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.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-62-20. Black Bear.

(1) Permit and Pursuit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit or bear pursuit permit.

(b) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).

(c) Limited entry bear permits are valid only for the hunt unit and for the specified season designated on the permit.

(d)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application whether they want a limited entry bear permit or a limited entry bear archery permit and/or bear pursuit permit.

(e) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(f) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry bear permit valid for the current year, may not apply for a permit thereafter for a period of two years.

R657-62-21. Antlerless Species.

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of

hunter education requirements and youth restrictions as provided in Rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

- (i) antlerless deer;
- (ii) antlerless elk;
- (iii) doe pronghorn; and
- (iv) antlerless moose, if available.

(d) Any person who has obtained a buck pronghorn permit or a bull moose permit may not apply in the same year for a doe pronghorn permit or antlerless moose permit, respectively, except for permits remaining after the drawing as provided in R657-62-13.

(e) Applicants may select up to five hunt choices when applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Hunt unit choices must be listed in order of preference.

(h) A person may not submit more than one application in the antlerless drawing per species.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) 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.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) 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.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-62-22. Sandhill Crane, Sharp-Tailed and Sage Grouse.

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A hunting or combination license is required to obtain a permit and may be purchased when applying.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as

provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Group applications.

(a) Up to four people may apply together.

(3) Waiting Periods do not apply.

R657-62-23. Swan.

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A Utah hunting or combination license is required to obtain a permit and may be purchased when applying.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(i) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(ii) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(iii) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(iv) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6(3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Up to four people may apply together in a Group Application.

(3) Waiting period does not apply.

R657-62-24. Cougar.

(1) Permit Applications

(a) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(b) A person may not apply for or obtain more than one cougar permit for the same year.

(c) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

(d) 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.

(e) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a

permit thereafter for a period of three seasons.

(b) Waiting periods are not incurred as a result of purchasing cougar harvest objective permits.

**KEY: wildlife, permits
May 10, 2010**

**23-14-18
23-14-19**

R657-62-25. Sportsman.

(1) Sportsman applications.

(a) One sportsman permit is offered to residents for each of the following species:

- (i) desert bighorn (ram);
- (ii) bison (hunter's choice);
- (iii) buck deer;
- (iv) bull elk;
- (v) Rocky Mountain bighorn (ram);
- (vi) Rocky Mountain goat (hunter's choice);
- (vii) bull moose;
- (viii) buck pronghorn;
- (ix) black bear;
- (x) cougar; and
- (xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods.

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to rule R657-41.

(b) Once-in-lifetime waiting periods.

(i) If you have obtained a once-in-a-lifetime permit through the sportsman drawing you are ineligible to apply for that once-in-a-lifetime species through the big game drawing.

(ii) If you have obtained a once-in-a-lifetime permit through the big game drawing you are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.

(c) Limited Entry waiting periods.

(i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, bear or cougar.

(ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, bear or cougar.

R657-62-26. Turkey.

(1) Turkey applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining one limited entry or remaining wild turkey permit.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one bearded turkey within the area and season specified on the permit.

(2) Group Applications are not accepted.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 15 years of age or younger on the posting date of the wild turkey drawing.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(5) Landowner turkey permits shall be issued pursuant to rule R657-54.

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, 2008 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, 2009 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2008 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 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.

1.6 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".

1.7 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.

1.8 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 "ASME Stamp" means the symbol used to designate that the container has been built to the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, Section VIII, Divisions 1 or 2, Rules for the Construction of Unfired Pressure Vessels.

2.2 "Board" means the Liquefied Petroleum Gas Board.

2.3 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.4 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.5 "Division" means the Division of the State Fire Marshal.

2.6 "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.

2.7 "ICC" means International Code Council, Inc.

2.8 "IFC" means International Fire Code.

2.9 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.10 "LPG" means Liquefied Petroleum Gas.

2.11 "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.

2.12 "NFPA" means the National Fire Protection Association.

2.13 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.14 "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.

2.15 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.16 "UCA" means Utah State Code Annotated 1953 as amended.

R710-6-3. Licensing.**3.1 Type of license.**

3.1.1 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.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 The application for a license to engage in the business of LPG as required in 3.1 of these rules, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.3 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.

3.4 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.

3.5 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.

3.6 Renewal.

Application for renewal shall be made on forms provided by the SFM.

3.7 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.

3.8 Change of Address.

Every licensee shall notify the Division, in writing, within

thirty (30) days of any change of his address.

3.9 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.10 List of Licensed Concerns.

3.10.1 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.

3.10.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.11 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.12 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.

3.13 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.

3.14 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.

3.15 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.16 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.

3.17 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 described in UCA, Section 53-7-308, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 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 applicant is allowed to use the adopted statute, administrative rules, NFPA 54, and NFPA 58. Any other materials to include cellular telephones or related cellular equipment are prohibited in the examination room.

4.4.2 The initial examination may also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant if so warranted by the test administrator.

4.4.3 Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

4.4.4 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.

4.4.5 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

4.4.6 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.7 As required in Sections 4.2 and 4.3 of these rules, 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.

4.4.8 As required in Sections 4.2 and 4.3.6 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, 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.

4.4.9 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.10 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that are licensed journeyman plumbers as required in the Construction Trades Licensing Act Plumber Licensing Rules, R156-55c, 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 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:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book 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.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.7.5 As required in Section 4.7 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant.

4.7.6 As required in Section 4.7 of these rules, those applicants that provide the Division with written verification of the completion of 40 hours of continuing training over the previous five-year period shall have the requirement for re-examination waived.

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 Section 5.2 of these rules.

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.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 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.

4.10.3 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:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 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.

4.15.1 No LPG certificate shall constitute authorization for

any person to enforce any provisions of these rules.

4.15.2 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.

4.15.3 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.

4.15.4 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.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 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.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 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 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 63G-4-202 and 63G-4-203.

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:

5.2.1 The person or applicant is not the real person in interest.

5.2.2 The person or applicant provides material misrepresentation or false statement in the application, whether original or renewal.

5.2.3 The person or applicant refuses to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.4 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.

5.2.5 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.

5.2.6 The person or applicant refuses to take the examination.

5.2.7 The person or applicant has been convicted of a violation of one or more federal, state or local laws.

5.2.8 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

5.2.9 Any offense of finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration.

5.2.10 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or it's appliances.

5.2.11 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.2.12 The person or applicant fails to pay the license fee, certificate of registration fee, examination fee or other fees as required in Section 6 of these rules.

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 63G-4-201.

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 63G-4-203.

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 63G-4-302.

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 63G-4-402.

R710-6-6. Fees.

6.1 Fee Schedule.

6.1.1 License and LPG Certificates (new and renewals):

6.1.1.1 License

6.1.1.1.1 Class I - \$450.00

6.1.1.1.2 Class II - \$450.00

6.1.1.1.3 Class III - \$105.00

6.1.1.1.4 Class IV - \$150.00

6.1.1.2 Branch office license - \$338.00

6.1.1.3 LPG Certificate - \$40.00

6.1.1.4 LPG Certificate (Dispenser--Class B) - \$20.00

6.1.1.5 Duplicate - \$30.00

6.1.2 Examinations:

6.1.2.1 Initial examination - \$30.00

6.1.2.2 Re-examination - \$30.00

6.1.2.3 Five year examination - \$30.00

6.1.3 Plan Reviews:

6.1.3.1 More than 5000 water gallons of LPG - \$150.00

6.1.3.2 5,000 water gallons or less of LPG - \$75.00

6.1.4 Special Inspections.

6.1.4.1 Per hour of inspection - \$50.00

(charged in half hour increments with part half hours charged as full half hours).

6.1.5 Re-inspection (3rd Inspection or more) - \$250.00

6.1.6 Private Container Inspection (More than one container) - \$150.00

6.1.7 Private Container Inspection (One container) - \$75.00

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.

6.3.1 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.

6.3.2 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:

8.1.1 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.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 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.

8.1.4 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:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete "20" from line three and replace it with "10".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 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 be marked with the ASME stamp as defined in Section 2.1 of these rules. 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 be marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME stamp as defined in Section 2.1 of these rules, the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the person seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional

nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. 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.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following sentence at the end of the section:

(A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.9.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (L) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.24.3.16 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.9 NFPA, Standard 58, Section 6.25.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

8.6.10 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

9.1.1 Concern failure to license - \$210.00 to \$900.00

9.1.2 Person failure to obtain LPG Certificate - \$30.00 to \$90.00

9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG - \$210.00 to \$900.00

9.1.4 Concern doing business under improper class - \$140.00 to \$600.00

9.1.5 Failure to notify SFM of change of address - \$60.00

9.1.6 Violation of the adopted Statute or Rules - \$210.00 to \$900.00

9.2 Rationale.

9.2.1 Double the fee plus the cost of the license.

9.2.2 Double the fee plus the cost of the certificate.

9.2.3 Double the fee plus the cost of the license.

9.2.4 Double the fee.

9.2.5 Based on two hours of inspection fee at \$30.00 per hour.

9.2.6 Triple the fee.

KEY: liquefied petroleum gas

May 24, 2010

53-7-305

Notice of Continuation March 30, 2006

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.****R722-310-1. Authority.**

This rule is authorized by Subsection 53-11-103(5).

R722-310-2. Definitions.

(1) Terms used in this rule are defined in Section 53-11-102.

(2) In addition:

(a) "Bureau" means the Bureau of Criminal Identification with the Utah Department of Public Safety.

(b) "Moral turpitude" as used in Subsection 53-11-108(2)(a)(vi), means a conviction of any offense involving:

- (i) theft;
- (ii) fraud;
- (iii) tax evasion;
- (iv) issuing bad checks;
- (v) interference with police;
- (vi) fleeing, resisting, or failing to obey police;
- (vii) obstruction of justice;
- (viii) bribery;
- (ix) perjury;
- (x) extortion;
- (xi) arson;
- (xii) criminal mischief;
- (xiii) wildlife violations "involving a weapon";
- (xiv) falsifying government records;
- (xv) receiving stolen property;
- (xvi) firearms violations;
- (xvii) vandalism;
- (xviii) crimes involving unlawful sexual conduct; and
- (xix) violating the pornographic and harmful materials and performances act.

(xx) In addition, a crime of "moral turpitude" means a conviction of an offense involving:

- (A) the use of alcohol,
 - (B) the unlawful use of narcotics or other controlled substances; or
 - (C) any offense involving dishonesty or misrepresentation.
- (c) "Peace officer" as used in Subsection 53-11-108(2)(c), means anyone who is employed either full time or part time by the federal, state or local government in one of the officer classifications listed in Subsection 53-13-102.

R722-310-3. Purpose.

(1) The purpose of this rule is to regulate:

- (a) bail bond recovery and enforcement agents;
- (b) as provided by Title 53, Chapter 11, the "Bail Bond Recovery Act."

R722-310-4. Application.

(1) In addition to the requirements set forth in Sections 53-11-109 and 53-11-113, all applicants seeking licensure under this chapter shall provide two completed sets of fingerprint cards for the purpose of fingerprint processing as provided in Section 53-11-115.

(2) An applicant seeking initial licensure that also wishes to carry a firearm shall satisfy the requirements of Title 53 Chapter 5, the "Concealed Weapon Act" plus complete the 16 hour weapons course required by Subsection 53-11-108(5).

(3) An applicant for an upgrade in licensure that also wishes to carry a firearm shall satisfy the requirements of Title 53 Chapter 5, the "Concealed Weapon Act."

(a) In addition, an applicant for an upgrade wishing to carry a firearm shall satisfy an eight hour firearm proficiency test which shall include an actual shooting component. This firearm proficiency test shall be adapted from a firearm course

under the supervision of the Bureau.

(b) A list of certified instructors shall be made available on the Bureau's web page.

(c) The firearm proficiency test and shooting component shall also be required upon each renewal.

R722-310-5. Licensure.

(1) In addition to the provisions set forth in Subsection 53-11-116(1)(b)(i), each license and identification card shall have on its face a designation as to whether or not the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).

(2) Providers offering instruction or continuing instruction required for licensure shall offer the courses to all applicants at the same course fees.

R722-310-5a. Presumed Lengths of Time of Licensure Denial.

(1) The following time lengths are presumed, but non-binding, waiting periods for an applicant whose license is denied:

- (a) 3 years for class B misdemeanor violations;
- (b) 5 years for class A misdemeanor violations;
- (c) 3 years for misdemeanor DUI and alcohol related reckless driving violations; and
- (d) felony violations shall require a waiting period until the conviction is expunged, if possible.

R722-310-6. Minimum Experience Requirements.

(1) In addition to the requirements set forth in Subsections 53-11-109(1)(b)(i) and (ii), an applicant claiming previous experience as either a bail recovery agent or law enforcement officer shall substantiate the experience as qualifying experience.

(2) The applicant may do so by showing that the experience claimed has been acquired within ten years immediately preceding application.

R722-310-7. Qualification Credit for Specified Training.

(1) An applicant receiving qualification credit under Section 53-11-114, is still required to attend the 16 hour training course referred to in Section 53-11-108.

(2) An applicant who holds a criminal justice bachelor's degree or who is certified to have successfully completed the state Peace Officers Standards and Training basic training course referred to in Section 53-6-202, shall be exempt from meeting the 1000 hours of experience requirements.

(3) Not more than 1000 hours shall be exempt for any specified training.

(4) If any license expires under Rule R722-310 for 90 days or more, the applicant shall reapply and the 16 hours of training shall be retaken.

R722-310-7a. Required Continuing Training for Licensure Renewal or Upgrade.

(1) An applicant seeking renewal or upgrade of each license in this section shall complete not less than eight hours of continuing classroom instruction as required by Subsection 53-11-111(2).

(2) Four of these required eight hours of continuing classroom instruction shall be provided by the Bureau.

(3) This four hour course shall be required every two years during the renewal process for each license level.

(a) The course shall provide updates on Utah law, administrative changes, and other pertinent information in order to enhance knowledge of bail recovery.

(b) The remaining four hours of continuing classroom instruction required under Subsection 53-11-111(2) is left to the discretion of the license renewal applicant.

R722-310-8. Notice to Commissioner.

Required notice to the commissioner under Subsection 53-11-116(5) when there is a change in the name or address of a bail bond agency and any change of employees or contract employees shall be in writing and signed by the licensee.

R722-310-9. Appeal on Denial of License.

(1) All adjudicative proceedings provided for herein shall be informal in accordance with Section 63G-4-203 and as allowed by Section 63G-4-202.

(2) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(3) The board shall review and make an initial determination on all license applications. An applicant denied licensure by the board shall be given opportunity to appeal the board's initial determination to the board for a hearing.

(4) The board shall issue a written decision to the applicant within ten days following the hearing.

(5) When the board denies the license following a hearing, the board's issued decision shall advise the applicant that the applicant may appeal to the commissioner within 30 days after the decision is issued.

(6) An appeal to the commissioner shall not result in a de novo hearing before the commissioner. It shall result in the department's administrative law judge reviewing the record as the commissioner's designee. The administrative law judge may request oral argument by the parties.

(7) In addition to the options in Subsection 53-11-118(4), the administrative law judge may affirm the board's decision.

(8) The administrative law judge shall issue a decision within 60 days after receipt of the appeal.

KEY: bail bond enforcement agent, bail bond recovery agent, license

January 1, 2009

53-11-103(5)

Notice of Continuation May 12, 2010

R765. Regents (Board of), Administration.**R765-604. New Century Scholarship.****R765-604-1. Purpose.**

To provide policy and procedures for the administration of the New Century Scholarship which will be awarded to high school graduates who either complete the requirements for an associate degree with at least a 3.0 grade point average prior to September 1 of the same year they would normally graduate with their high school class, or who complete a rigorous math and science curriculum approved by the State Board of Regents with a 3.0 grade point average.

R765-604-2. References.

- 2.1. 53B-8-105, Utah Code Annotated 1953

R765-604-3. Definitions.

- 3.1. "Program" - New Century Scholarship program.
- 3.2. "Awards" - New Century Scholarship funds which provide payment as provided in this rule.
- 3.3. "SBR" - State Board of Regents.
- 3.4. "Reasonable progress" - A recipient must be enrolled at least full-time (12 credit hours) during any semester for which he or she receives an award. Effective for new 2010 recipients and continuing students starting Summer Semester 2010.
- 3.5. "Recipient" - A Utah resident who either: (1) completes the requirements for an associate degree with at least a 3.0 grade point average either prior to September 1 of the year he or she graduates from a Utah high school, or, if he or she graduates early or is home schooled, prior to the September 1 of the year in which he or she normally would have graduated with his or her class; or (2) completes the rigorous math and science curriculum approved by the State Board of Regents with at least a 3.0 grade point average.
- 3.6. "High school graduation date" - The date when an applicant or recipient graduates from high school with his or her class, or if he or she graduates early or is home schooled, the date on which he or she normally would have graduated from high school with his or her class.
- 3.7. "Associate Degree" - An Associate of Arts, Associate of Science, or Associate of Applied Science degree, or equivalent academic requirements, as received from or verified by a regionally accredited Utah public college or university, provided that if the college or university does not offer the associate degree, the requirement can be met if the institution's registrar verifies that the student has completed academic requirements equivalent to an associate degree prior to the September 1 deadline.
- 3.8. "Math and Science Curriculum" - The rigorous math and science curriculum developed and approved by the State Board of Regents which, if completed, qualifies a high school student for a New Century Scholarship.

R765-604-4. Conditions of the Scholarship.

- 4.1. Program Terms - The program scholarship may be used at any 4-year public or private not-for-profit higher education institution in the state accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.
- 4.2. Applicant Qualification - To qualify for the award, an applicant must have either: (1) completed the requirements for an associate degree with at least a 3.0 college grade point average by September 1 of the year of his or her high school graduation date; or (2) completed the approved math and science curriculum with at least a 3.0 grade point average by September 1 of the year of his or her high school graduation date.
- 4.3. Accredited College or University - The associate degree must be received from, or the approved math and science curriculum must be completed through, a regionally accredited

Utah public institution, provided the institution's academic on-campus residency requirements, if any, will not affect a student's eligibility for the scholarship if the institution's registrar's office verifies that the student has completed the necessary class credits for an associate degree or completed the approved math and science curriculum.

4.4. Eligible Institutions - The award may be used at any 4-year public or private not-for-profit higher education institution in the state accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

4.5. Enrollment at More Than One Institution - The award may be used at more than one of Utah's eligible institutions within the same semester.

4.6. Student Transfer - The award may be transferred to a different eligible Utah institution upon the request of the student.

R765-604-5. Application Procedures.

- 5.1. Application Contact - Qualifying students may apply for the award through the SBR office.
- 5.2. Support Documentation - Applicants must provide an official high school transcript verifying their high school graduation date and ACT score where applicable, an official college transcript, and if the student is enrolled at an institution which does not offer an associate degree or an institution that will not award the associate degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements prior to September 1 of the year of the recipient's graduation date.
- 5.3. Application Deadlines - Beginning on or after January 1, 2010, applicants shall meet the following deadlines to qualify for an award:
 - 5.3.1. An application shall be submitted on or before January 8 of the applicant's high school graduation year. A priority deadline may be established each year. Students who meet the priority deadline may be given first priority of consideration for awards.
 - 5.3.2. All support documentation shall be submitted on or before October 15 following the applicant's high school graduation.
- 5.4. Incomplete Documentation - Applications or other submissions that have missing information or missing documents are considered incomplete, will not be considered, and may result in failure to meet a deadline.

R765-604-6. Amount of Awards and Distribution of Award Funds.

- 6.1. Amount of Awards -
 - 6.1.1. For a student who graduates from high school in the 2009-10 school year:
 - 6.1.1.1. If used at an institution within the state system of higher education, the amount of the award, depending on available funding, will be up to 75% of the total cost of tuition based on the number of hours the student is enrolled; or
 - 6.1.1.2. If used at an institution not within the state system of higher education, the award, depending on available funding, will be up to 75% of the tuition costs at the institution, not to exceed 75% of the average tuition costs at the baccalaureate degree granting institutions within the state system of higher education.
 - 6.1.2. For a student who graduates from high school in or after the 2010-11 school year, the total award is up to \$5,000, allocated semester-by-semester throughout whichever of the following time periods is the shortest:
 - 6.1.2.1. Two years of full-time equivalent enrollment;
 - 6.1.2.2. 60 credit hours; or
 - 6.1.2.3. Until the student meets the requirements for a baccalaureate degree.

6.1.3. Tuition waivers, financial aid, or other scholarships will not affect the total award amount.

6.2. Tuition Documentation - The award recipient shall submit to SBR a copy of a class schedule verifying the number of hours enrolled. SBR will calculate the amount of the award based on the published tuition costs at the enrolled institution(s) and the availability of program funding.

6.3. Award Payable to Institution - The scholarship award will be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds should be used for higher education expenses including tuition, fees, books, supplies and equipment required for courses of instruction.

6.4. Added Hours after Award - The award will be increased up to 75% of the tuition costs of any hours added in the semester after the initial award has been made, depending on available funding. Recipient shall submit to SBR a copy of the tuition invoice or class schedule verifying the added hours before a supplemental award is made.

6.5. Dropped Hours after Award - If a student drops hours which were included in calculating the award amount, either the subsequent semester award will be reduced accordingly, or the student shall repay the excess award amount to SBR. If a recipient fails to complete a minimum of twelve semester hours, the scholarship may be revoked (see 7.1) unless the student needs fewer than twelve hours for completion of a degree. No award will be made for that semester, and a grade earned in a class completed in that semester, if any, will not be considered in evaluating the recipient's reasonable progress.

6.6. Funding Constraints of Awards - The SBR may limit or reduce awards, depending on the annual legislative appropriations and the number of qualified applicants.

R765-604-7. Time Constraints and Continuing Eligibility.

7.1. Reasonable Progress toward Degree Completion - In order to renew and award, the recipient must maintain reasonable progress toward degree completion by achieving a 3.0 GPA each semester and enrolling full-time (12 credit hours) each semester. If the recipient fails to maintain a 3.0 GPA or fails to enroll full-time, the award may be revoked.

7.1.1. Each semester, the recipient must submit to SBR a copy of his or her grades to verify that he or she is meeting the required grade point average and is completing a minimum of twelve semester hours. These documents must be submitted by the following dates effective for new 2010 recipients and continuing students starting Summer Semester 2010.

7.1.1.1. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

7.1.1.2. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

7.1.1.3. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

7.1.1.4. Proof of enrollment if you are attending Brigham Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.

7.1.1.5. Proof of enrollment if you are attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

7.1.1.6. Proof of enrollment if you are attending Brigham Young University during Summer Term and proof of completion of the previous semester or term must be submitted by July 30.

7.1.2. If a recipient earns less than a 3.0 GPA in any single semester, the recipient must earn a 3.0 GPA or better the following semester to maintain eligibility for the award.

7.1.3. A recipient will not be required to enroll full-time if the recipient can complete the degree program with fewer credits.

7.2. No Awards after Five Years - The SBR will not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

7.3. No Guarantee of Degree Completion - A New Century Scholarship award does not guarantee that the recipient will complete his or her baccalaureate program within the recipient's scholarship eligibility period.

7.4. Awards Initiated Within Twelve Months of High School Graduation - An award recipient must enroll full-time at an eligible institution of higher education within twelve months of the recipient's high school graduation unless the recipient seeks and obtains an approved deferral or leave of absence from the SBR.

R765-604-8. Deferral or Leave of Absence.

8.1. Does Not Extend Time - A deferral or leave of absence will not extend the time limits of the scholarship.

8.2. Deferrals or leaves of absence may be granted, at the discretion of the SBR, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

**KEY: higher education, secondary education, scholarships
May 11, 2010 53B-8-105
Notice of Continuation December 21, 2009**

R861. Tax Commission, Administration.**R861-1A. Administrative Procedures.****R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.**

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

- (1) A request may be oral or written.
- (2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.
- (3) The party requesting a conference will be notified of the result:
 - (a) orally or in writing;
 - (b) in person or through counsel; and
 - (c) at the conclusion of the conference or within a reasonable time thereafter.
- (4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

- a) For appeals concerning property value, the record shall include:
 - (1) the name and address of the property owner;
 - (2) the identification number, location, and description of the property;
 - (3) the value placed on the property by the assessor;
 - (4) the basis stated in the taxpayer's appeal;
 - (5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and
 - (6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization

shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

- (1) dismissal for lack of jurisdiction;
- (2) dismissal for lack of timeliness;
- (3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

- a) dismissal under C.5.a)(1) or (3) was improper;
- b) the taxpayer failed to exhaust all administrative remedies at the county level; or
- c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

- a) the name and address of the property owner;
- b) the identification number, location, and description of the property;
- c) the value placed on the property by the assessor;
- d) the taxpayer's estimate of the fair market value of the property; and
- e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not

be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,
2. the revenue laws of the state of Utah, and
3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of

the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or
2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

- (a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or
- (b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the

information disclosed.

G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

- (i) the individual's name and address;
- (ii) a notation that the request is made in accordance with the Americans with Disabilities Act;
- (iii) a description of the nature and extent of the individual's disability;
- (iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and
- (v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

- (i) the requested accommodation is being supplied; or
- (ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

(a) Requests for review shall be directed to:

Executive Director

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay

at 711

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

- (i) the individual's name and address;
- (ii) the nature and extent of the individual's disability;
- (iii) a copy of the accommodation coordinator's reply;
- (iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
- (v) a description of the accommodation desired; and
- (vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

- 1. name;
- 2. home address;
- 3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

- 1. name;
- 2. home address; and
- 3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

- 1. name;
- 2. home address; and
- 3. social security number and federal identification

number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

- (i) Internal Audit;
- (ii) Appeals;
- (iii) Economic and Statistical; and
- (iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- (i) Administration;
- (ii) Taxpayer Services;
- (iii) Motor Vehicle;
- (iv) Auditing;
- (v) Property Tax;
- (vi) Processing; and
- (vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) waivers of penalty and interest or offers in compromise agreements in amounts under \$10,000, in conformance with standards established by the commission;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

- (a) the agency budget;
- (b) the strategic plan of the agency;
- (c) administrative rules and bulletins;
- (d) waivers of penalty and interest in amounts of \$10,000 or more as per the waiver of penalty and interest policy;
- (e) offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of \$10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office;

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential

conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(3) A petition for redetermination of a claim for refund filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(4) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah

statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

(a) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(b) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(c) If more than one commissioner or administrative law judge is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(2) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial

hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(ii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iii) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means. A request by a party that documents be transmitted by e-mail shall constitute a waiver of confidentiality of any confidential information disclosed in that e-mail.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office

upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20

or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame

agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Section 63G-4-302.

(1) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the Tax Commission.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(2) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall

make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

(a) the commission's interpretation of statutory language as stated in an administrative rule; or

(b) the commission's grant of authority under a statute.

(2) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(3) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(4) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1-502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

- a) the nature of the claim being settled and any claims remaining in dispute;
- b) a proposed order for commission approval; and
- c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling

were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-

sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

- (1) the functions being performed as they relate to the flow of data through the system;
- (2) the internal controls used to ensure accurate and reliable processing; and
- (3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

- (1) record formats or layouts;
- (2) field definitions, including the meaning of all codes used to represent information;
- (3) file descriptions, e.g., data set name; and
- (4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA

standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and

readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

1. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision,

order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in (3)(a)

or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

- (a) named party of a decision or order;
- (b) party requesting a private letter ruling; or
- (c) designated representative of a party described in (4)(a)

or (4)(b).

(5) Information that may be disclosed under Section 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).

(6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

(b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this

state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;
2. provide for waiver of initial hearings where requested by any party;
3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;
4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;
5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or
6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

- (i) Chapter 12, Sales and Use Tax Act;
- (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or
- (iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

- (i) not accompanied by a tax return; or
- (ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

- (i) Chapter 12, Sales and Use Tax Act;
- (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or
- (iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

- (i) submitting a letter requesting the waiver;
 - (ii) providing financial information requested by the commission; and
 - (iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.
- (b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.
- (3) Upon review of the financial information described in Subsection (2), the commission shall:
- (a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or
 - (b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

- (i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;
- (ii) the total tax owed for the period has been paid;
- (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;
- (iv) the taxpayer has not previously received a waiver review for the same period; and
- (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

- (i) review the request;
 - (ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and
 - (iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.
- (c) Each request for waiver is judged on its individual merits.
- (d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

- (a) Timely Mailing:
 - (i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.
 - (ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:
 - (A) has an excellent history of compliance;
 - (B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and
 - (C) presents documentation showing that the return or payment was mailed timely.
- (b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

- (c) Death or Serious Illness:
 (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.
 (ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.
 (iii) The death or illness must have occurred on or immediately prior to the due date of the return.
- (d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.
- (e) Disaster Relief:
 (i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.
 (ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.
 (iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.
- (f) Reliance on Erroneous Tax Commission Information:
 (i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.
 (ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.
 (iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.
- (g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.
- (h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.
 (i) Reliance on Competent Tax Advisor:
 (i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.
 (ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.
 (j) First Time Filer:
 (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.
 (ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.
- (k) Bank Error:
 (i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.
 (ii) A letter from the bank verifying its error is required.
- (l) Compliance History:
 (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining

whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if all of the following conditions are met:

(a) the purpose of the meeting is to discuss a commission administrative rule;

(b) two commissioners are present at a single anchor location; and the number of separate connections for commissioners who are not present at the anchor location is no more than two.

(2)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (2)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;

(b) DHL Next Day 10:30 a.m.;

(c) DHL Next Day 12:00 p.m.;

(d) DHL DHL Next Day 3:00 p.m.; and

(e) DHL 2nd Day Service;

(2) Federal Express (FedEx):

(a) FedEx Priority Overnight;

(b) FedEx Standard Overnight;

(c) FedEx 2 Day;

(d) FedEx International Priority; and

- (e) FedEx International First; and
- (3) United Parcel Service (UPS):
 - (a) UPS Next Day Air;
 - (b) UPS Next Day Air Saver;
 - (c) UPS 2nd Day Air;
 - (c) UPS 2nd Day Air A.M.;
 - (d) UPS Worldwide Express Plus; and
 - (e) UPS Worldwide Express.

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 59-1-403
 59-1-404
 59-1-501
 59-1-502.5
 59-1-602
 59-1-611
 59-1-705
 59-1-706
 59-1-1004
 59-1-1404
 59-7-505
 59-10-512
 59-10-532
 59-10-533
 59-10-535
 59-12-107
 59-12-114
 59-12-118
 59-13-206
 59-13-210
 59-13-307
 59-10-544
 59-14-404
 59-2-212
 59-2-701
 59-2-705
 59-2-1003
 59-2-1004
 59-2-1006
 59-2-1007
 59-2-704
 59-2-924
 59-7-517
 63G-3-301
 63G-4-102
 76-8-502
 76-8-503
 59-2-701
 63G-4-201
 63G-4-202
 63G-4-203
 63G-4-204
 63G-4-205 through 63G-4-209
 63G-4-302
 63G-4-401
 63G-4-503
 63G-3-201(2)
 68-3-7

R865. Tax Commission, Auditing.**R865-6F. Franchise Tax.****R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.**

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;
2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;
3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or
4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;
2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;
3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or
4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise

tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.**A. Definitions.**

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and
2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal

property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of

business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following

limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Allocation" means the assignment of nonbusiness income to a particular state.

(b) "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

(c) "Base of operations" means the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the taxpayer or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other function necessary to the exercise of his trade or profession at some other point or points.

(d) "Business activity" refers to the transactions and activities occurring in the regular course of a particular trade or business of a taxpayer, or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations.

(e) "Business income" means income of any type or class,

and from any activity, that meets the relationship described in Subsection (2)(b), the transactional test, or Subsection (2)(c), the functional test. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income is of no aid in determining whether income is business or nonbusiness income.

(f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(g) "Employee" means an:

(i) officer of a corporation; or

(ii) individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(h) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold.

(i) Gross receipts, even if business income, do not include such items as, for example:

(A) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(B) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(C) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(D) damages and other amounts received as the result of litigation;

(E) property acquired by an agent on behalf of another;

(F) tax refunds and other tax benefit recoveries;

(G) pension reversions;

(H) contributions to capital (except for sales of securities by securities dealers);

(I) income from forgiveness of indebtedness; or

(J) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(ii) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of Subsection (11).

(i) "Nonbusiness income" means all income other than business income.

(j) "Place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

(k) "Taxpayer" means a corporation as defined in Section 59-7-101.

(l) "To contribute materially" includes being used operationally in the taxpayer's trade or business. Whether property contributes materially is not determined by reference to the property's value or percentage of use. If an item of property contributes materially to the taxpayer's trade or business, the attributes, rights, or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business.

(m) "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Utah.

(2) Business and Nonbusiness Income.

(a) Apportionment and Allocation. Section 59-7-303 requires that every item of income be classified as either business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income.

(b) Transactional Test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(i) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within the state, the resulting income of the transaction or activity is business income for Utah purposes. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in this state.

(ii) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted, or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, those activities do not satisfy the transactional test. The transactional test includes income from sales of inventory, property held for sale to customers, and services commonly sold by the trade or business. The transactional test also includes income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(c) Functional Test. Business income also includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(i) The following definitions apply to this Subsection (2)(c).

(A) "Acquisition" means the act of obtaining an interest in property.

(B) "Disposition" means the act, or the power, of relinquishing or transferring an interest in or control over property to another, either in whole or in part.

(C) "Integral part" means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part, in a manner that materially contributes to the production of business income.

(D) "Management" means the oversight, direction, or control, whether directly or by delegation, of the property for the use or benefit of the trade or business.

(E) "Property" includes an interest in, control over, or use of property, whether the interest is held directly, beneficially, by contract, or otherwise, that materially contributes to the production of business income.

(ii) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is

or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within the state. Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time, generally five years, or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes, has lost its character as a business asset and is not subject to this subsection. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.

(iii) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income if the property is or was used in the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to Subsection (2)(c)(iii).

(B) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(iv) Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

(v) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in this state.

(vi) If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to this state, or includes the original cost in the property factor, it is presumed that the item of property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

(vii) Application of the functional test is generally unaffected by the form of the property, whether tangible or intangible, real or personal. Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component of the taxpayer's trade or business operations.

(A) Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this Subsection (2)(c)(vii).

(B) While apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, that is, the same unitary business, establishment of that

relationship is not the exclusive basis for concluding that the income is subject to apportionment.

(C) It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment.

(d) Relationship of Transactional Test and Functional Tests to the United States Constitution.

(i) The due process clause and the commerce clause of the United States Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extra-territorial state taxation afforded by these clauses is often described as the unitary business principle. The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted as least in part in the state.

(ii) The unitary business conducted in this state includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity, in the case of the transactional test, or the property, in the case of the functional test, to be tied to the same trade or business that is conducted within the state. Determination of the scope of the unitary business conducted in the state is without regard to the extent to which this state requires or permits combined reporting.

(e) Business and Nonbusiness Income Application of Definitions.

(i) Rents From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business and therefore is includable in the property factor under Subsection (8)(a)(i). Property that has been converted to nonbusiness use has lost its character as a business asset and is not subject to this subsection.

(ii) Gains or Losses From Sales of Assets. Gain or loss from the sale, exchange, or other disposition of real property or of tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income or it was previously included in the property factor and later removed from the property factor before its sale, exchange, or other disposition, the gain or loss constitutes nonbusiness income. See Subsection (8)(a)(ii).

(iii) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations, or where the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(iv) Dividends. Dividends are business income where the stock with respect to which the dividends were received arose out of or was acquired in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(v) Patent and Copyright Royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arose out of or was

created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the patent or copyright is an integral, functional, or operational component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

(vi) Proration of Deductions. In most cases, an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases, an allowable deduction may be applicable to the business incomes of more than one trade or business or several items of nonbusiness income. In those cases, the deduction shall be prorated among those trades or businesses and those items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(f)(i) A schedule must be submitted with the return showing the:

(A) gross income from each class of income being allocated;

(B) amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(C) total amount of the applicable expenses for each income class; and

(D) net income of each income class.

(ii) The schedule shall indicate items of income and expenses allocated both to the state and outside the state.

(g) Year to Year Consistency. In filing returns with the state, if the taxpayer departs from or modifies the manner of prorating any deduction used in returns for prior years in a material way, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(h) State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of any material variance.

(3) Unitary Business.

(a) Unitary Business Principle.

(i) The Concept of a Unitary Business. A unitary business is a single economic enterprise that is made up of either separate parts of a single business entity or a group of business entities related through common ownership that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in this state that comes from being part of a unitary business conducted both within and without the state is what provides the constitutional due process definite link and minimum connection necessary for the state to apportion business income of the unitary business, even if that income arises in part from activities conducted outside the state. The business income of the unitary business is then apportioned to this state using an apportionment percentage provided by Section 59-7-311. This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(ii) Constitutional Requirement for a Unitary Business. The sharing or exchange of value described in Subsection (3)(a)(i) that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive

investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. In this state, the unitary business principle shall be applied to the fullest extent allowed by the United States Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of those activities or entities would not be allowed by the United States Constitution.

(iii) Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one unitary business. In those cases, it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and out-of-state factors that relate to the respective unitary business whose income is being apportioned.

(iv) Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a group of business entities related through common ownership, as defined in Section 59-7-101.

(b) Determination of a Unitary Business.

(i) A unitary business is characterized by significant flows of value evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 US 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular characteristic of a business operation may be suggestive of one or more of the factors mentioned above.

(ii) Description and Illustration of Functional Integration, Centralization of Management, and Economies of Scale.

(A) Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

(I) Sales, Exchanges, or Transfers. Sales, exchanges, or transfers (collectively "sales") of products, services, and intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because those sales can represent an assured market for the seller or an assured source of supply for the purchaser.

(II) Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when the marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or

intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. That activity, however, is relevant to determining the existence of economies of scale and centralization of management.

(III) Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

(IV) Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration.

(V) Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings and is significant to each entity's operations or sales, provides evidence of functional integration.

(VI) Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending that serves an investment purpose of the lender does not necessarily provide evidence of functional integration.

(B) Centralization of Management. Centralization of management exists when directors, officers, and other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role may be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

(I) Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.

(II) Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance

of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one or more significant operating aspects of one business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

(C) Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that support the finding of economies of scale. The order of the list does not establish a hierarchy of importance.

(I) Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.

(II) Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market provides evidence of economies of scale.

(c) Indicators of a Unitary Business.

(i) Business activities that are in the same general line of business generally constitute a single unitary business, as for example, a multistate grocery chain.

(ii) Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices.

(iii) Business activities that might otherwise be considered as part of more than one unitary business may constitute one unitary business when the factors outlined in Subsection (3)(b) are present. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business the normal matters a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

(4) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) Except as provided in Subsection (4)(a)(ii)(B), if a

taxpayer does not make an election to double weight the sales factor under Subsection 59-7-311(3) and one or more of the factors listed in Subsection 59-7-311(2)(a) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors present and dividing that sum by the number of factors present.

(B) If a taxpayer has made an election to double weight the sales factor under Section 59-7-311(3) and if the sales factor is present, the denominator of the fraction described in Subsection (4)(a)(ii)(A) shall be increased by one.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(5) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(6) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to

the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(7) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (8), the payroll factor, see Subsection (9), and the sales factor, see Subsection (10) of the trade or business of the taxpayer. For exceptions see Subsection (11).

(8) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (8)(g).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time, normally five years, during which the property is no longer held for use in the trade or business.

(c) Consistency in Reporting. In filing returns with this

state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Property Factor Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection (11)(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be

annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	\$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	\$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:
 $\$120,000 / 12 = \$10,000$

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (8)(g).

(9) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded from the payroll factor. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(d) Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(e)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(f) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(g) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under this Subsection (9). The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(h) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the

state.

(ii) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(10) Sales Factor. In General.

(a) Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Subsection (11)(c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including

gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (11)(c).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (10)(e)) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do

not constitute sales to the United States government.

(f) Sales Other than Sales of Tangible Personal Property in this State.

(i) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

(ii) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(A) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(B) the sale, rental, leasing, or licensing or other use of real property;

(C) the rental, leasing, licensing or other use of intangible personal property; or

(D) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(iii) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(iv) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(A) the income producing activity is performed wholly within this state; or

(B) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(v) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(A) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(C) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state,

the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

(11) Special Rules:

(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (i) separate accounting;
- (ii) the exclusion of any one or more of the factors;
- (iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under Subsection (8)(f)(ii) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

(c) Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

(iii) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily

identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (10)(a)(i), and income from the sale, licensing or other use of intangible personal property, see Subsection (10)(f)(ii)(D).

(A) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (11)(c)(i) through (iii), such gains or losses shall be treated as provided in this Subsection (11)(c)(iv). This Subsection (11)(c)(iv) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (11)(c)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (11)(c)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this Subsection (11)(c)(iv)(D), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(d) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(e) Partnership or Joint Venture Income. Income or loss

from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

- a. depreciation (see rule R865-6F-9),
- b. depletion,
- c. exploration and development expenses,
- d. intangible drilling costs,
- e. accounting methods and periods (see rule R865-6F-2),

and

- f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

- a. installment sales (see rule R865-6F-15),
- b. consolidated returns (see rule R865-6F-4),
- c. liquidating dividends,
- d. municipal bond interest,
- e. capital loss deduction,
- f. loss carry-overs and carry-backs, and
- g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report

on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321.

(1) When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long-term contracts from sources within this state is determined pursuant to this rule.

(2) Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(a) Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

(b) Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

(3) Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner

for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

(4) Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(b) Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

(c) The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

(5) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

(b) If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a \$9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is \$2,700,000 (30 percent of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(c) If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year the contract was undertaken, and \$3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is \$3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income

year has received only \$2,500,000 of the \$3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is \$2,500,000.

(d) The sales factor, except as noted above in Subsections (5)(b) and (c), is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

(6) The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

(7) The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

(a) In the income year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at Subsection (7)(a) is apportioned to this state by the following method:

(i) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(ii) each fraction determined in Subsection (7)(b)(i) is multiplied by the apportionment formula percentage for that particular year;

(iii) these factors are totaled; and

(iv) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

(c) A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Subsection (7)(d).

(d) The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the

management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions:

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(d) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

(e) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(f) "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(g) "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

(h) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(i) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated

to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

(a) In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

(b) Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

(5) The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

(a) With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

(a) The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

(ii) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

(8) This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

(a) owned or rented any real or personal property in this state;

(b) made any pickups or deliveries within this state;

(c) traveled more than 25,000 mobile property miles

within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or (d) made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as

ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;
2. nonrefundable credits with a carryforward;
3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63M-1-401 through 63M-1-416.

- (1) Definitions:
- (a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:
- (i) that is designed, constructed, and used to store or maintain equipment:
 - (A) that is transported outside of the enterprise zone; and
 - (B) for which the credit is taken;
 - (ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and
 - (iii) from where the use of the equipment is directed or managed.
- (b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.
- (c) "Construction work" does not include facility maintenance or repair work.
- (d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).
- (e) "Public utilities business" means a public utility under Section 54-2-1.
- (f) "Qualifying investment" does not include an investment made by a member of a unitary group in plant, equipment, or other depreciable property of another member of that unitary group.
- (g) "Taxpayer" means the person claiming the tax credits in section 63M-1-413.
- (h) "Transfer" pursuant to Section 63M-1-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.
- (i) "Unitary group" is as defined in Section 59-7-101.
- (2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:
- (a)(i) located within the boundaries of the enterprise zone; and
 - (ii) used exclusively in business operations conducted within the enterprise zone; or
- (b) in the case of equipment or other depreciable property, based in the enterprise zone.
- (3) The following examples relate to the investment tax credit.
- (a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.
- (b) If the same manufacturer described in Subsection(4)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.

(c) A business consists of a mine office located in an enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.

(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.

(e) The same business described in Subsection(4)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be occasionally stored or maintained in the enterprise zone. This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.

(4) The calculation of the number of full-time positions for purposes of the credits allowed under Subsections 63M-1-413(1)(a) through(d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

(5) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

(6) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63M-1-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

(7) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

(8) Corporate franchise tax credits may not be used to offset or reduce the \$100 minimum tax per corporation.

(9) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

(10) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

(b) "Business and nonbusiness income" are as defined in R865-6F-8(1).

(c) "Car-mile" means a movement of a unit of car

equipment a distance of one mile.

(d) "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

(e) "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

(h) "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

(i) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(j) "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

(k) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

(2) When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

(a) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

(b) Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

(5) The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income.

The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

(a) With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(8).

(b) With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

(c) Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

(6) In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

(a) The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(9).

(b) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

(i) Intrastate: all receipts from shipments that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

(c) The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

(i) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

(ii) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

(7) The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(2) When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

(3) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(4) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

(5)(a) All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax

period shall be included in the numerator of the property factor.

(b) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

(i) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

(ii) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(A) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(B) Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of \$4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	\$3,000,000
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Value of mobile property:
 $95/365 \text{ or } (.260274) \times \$4,000,000 = \$1,041,096$

Value of leased satellite property used in-state:
 $(.02) \times \$100,000,000 = \$2,000,000$

Total value of property attributable to state = \$6,041,096

Total property factor percentage:
 $\$6,041,096/\$500,000,000 = 1.2082\%$

(6) The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

(7) The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(10)(c).

(8) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

(a) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

(b) Except as provided in Subsection (8)(b)(ii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

(i) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

(ii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Subsection (8)(b)(i). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

(iii) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;

(iii) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

(iv) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

(v) any corporation organized under the provisions of 12 U.S.C. Sections 611 through 631.

(vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

(vii) a production credit association organized under the

Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

(ix) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded;

(x) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix) is authorized to transact.

(A) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(B) The Tax Commission is authorized to exclude any person from the application of Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(i) Gross rents includes:

(A) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(B) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(C) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(ii) Gross rents does not include:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(D) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

(i) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

(ii) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

(k) "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(A) on which the taxpayer may claim depreciation for federal income tax purposes; or

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(s) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

(2) Apportionment and Allocation.

(a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(c) Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

(3) Receipts Factor.

(a) In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

(c) Receipts from the lease of tangible personal property.

(i) Except as described in Subsection (3)(d), the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(B) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(i) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured

by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(g), and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(iii) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

(iii) The receipts factor shall include the following

investment and trading assets and activities:

(A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

(iv) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in Subsection (3)(m) that are attributable to this state.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and (3)(m)(iv)(B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(D) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in Subsections (4)(c) and (d).

(v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(A) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is

determined by multiplying the amount of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B), attributable to this state and included in the numerator is determined by multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(vi) If the taxpayer elects or is required by the Tax Commission to use the method set forth in Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

(vii) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(9) and (10).

(o) Attribution of certain receipts to commercial domicile.

(i) Except as provided in Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

(ii)(A) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in Subsections (3)(a) through (n) rather than being attributed to the commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

(B) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under Subsections (3)(a) through (n) may not be included in the numerator of this state's receipts factor.

(4) Property Factor.

(a) In General.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which

is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(i) For taxpayers that do not elect to include the property described in Subsections (4)(g) through (i) within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) For taxpayers that elect to include the property described in Subsections (4)(g) through (i) within the property factor:

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

(i) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

(ii) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

(e) Average value of real property and tangible personal property rented to the taxpayer.

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

(f) Location of real property and tangible personal property owned or rented to the taxpayer.

(i) Except as described in Subsection (4)(f)(ii), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(B) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) Location of Loans.

(i) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(A) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(B) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(C) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(A) the taxpayer had a regular place of business within this state at the time the loan was made; and

(B) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

(iv) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it

shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

(v) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(A) Solicitation. Solicitation is either active or passive.

(I) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(II) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(C) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(D) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(I) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(II) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(E) Administration. Administration is the process of managing the account.

(I) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(II) The activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of Subsection (4)(g).

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

(j) Each taxpayer shall make an initial election on whether

to include the property described in Subsections (4)(g) through (i) within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

(5) Payroll factor.

(a) In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

(b) Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

(c) When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state;

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(6) This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Call" means a specific telecommunications transmission as described in Subsection (1)(f).

(b) "Channel termination point" means the point at which information can enter or leave the telecommunications network.

(c) "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

(d) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not

physically located in any particular state.

(e) "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

(f) "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

(g) "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

(2) Apportionment and Allocation.

(a) A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

(c) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8) and the sales factor in accordance with R865-6F-8(9).

(3)(a) Property Factor.

(b) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(7).

(4) Sales Factor Numerator.

(a) The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

(i) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

(ii) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

(iii) receipts derived from charges for individual toll calls that originate and terminate in Utah;

(iv) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

(v) receipts derived from any other charges if the charges

are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

(b) Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

(i) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

(ii) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(1) Definitions.

(a) "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

- (i) for which the broker or dealer does not take title; and
- (ii) as an agent for a customer's account.

(b) "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

(c) "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

(d) "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(e) "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

(f) "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

(2) Apportionment and allocation.

(a) A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(3) and (6). Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(8), and the sales factor in accordance with R865-6F-8(9).

(3) Property factor.

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the

taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

(b) Securities or commodities used to produce income shall be valued at original cost.

(4) Sales factor.

(a) The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

(b) Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

(c) Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

(d) Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

R865-6F-37. Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309.

(1) A taxpayer shall disclose a reportable transaction to the commission by:

(a) marking the box on the taxpayer's corporate franchise or income tax return indicating that the taxpayer has filed federal form 8886, or successor form, with the Internal Revenue Service; and

(b) providing the commission a copy of the form described in Subsection (1)(a) upon the request of the commission.

(2)(a) A material advisor shall disclose a reportable transaction to the commission by attaching a copy of the federal form 8264, or successor form, and any additional information that the material advisor submitted to the Internal Revenue Service, to the form prescribed by the commission.

(b) A material advisor shall provide the commission the information described in Subsection (2)(a) within 60 days after the form 8264, or successor form, was required to be filed with the Internal Revenue Service.

(3)(a) The list of persons a material advisor is required to maintain under 26 C.F.R. Sec. 301.6112-1 shall satisfy the requirement for the list of persons a material advisor is required to maintain under Section 59-1-1307.

(b) If more than one material advisor is required to maintain a list of persons in accordance with Section 59-1-1307, the material advisor that maintained the list required by 26 C.F.R. Sec. 301.6112-1 shall maintain the list required by Section 59-1-1307.

R865-6F-38. Renewable Energy Credit Amount Pursuant to Utah Code Ann. Section 59-7-614.

An amount certified by the Utah State Energy Program under rule R638-2, Renewable Energy Systems Tax Credit, as qualifying for the tax credit under Section 59-7-614 shall, in the absence of fraud or misrepresentation, be the amount allowed by the commission as a credit under that section.

59-13-202
63M-1-401 through 63M-1-416

R865-6F-39. Definitions Related to Captive Real Estate Investment Trust and Foreign Real Estate Investment Trust Pursuant to Utah Code Ann. Section 59-7-101.

The following definitions apply to the definitions of captive real estate investment trust and foreign real estate investment trust in Section 59-7-101.

(1) "Cash or cash equivalents" means currency and coins, bank balances, negotiable money orders, checks, and highly liquid investments that can easily be converted into cash, such as treasury bills, certificates of deposit, marketable securities, and negotiable financial instruments.

(2) "Established securities market" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(2) (2007), which is adopted and incorporated by reference.

(3) "Listed Australian property trust" means:

(a) an Australian unit trust registered as a managed investment scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; and

(b) an entity organized as a trust, provided that an entity listed in Subsection (3)(a) owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests or shares of that trust.

(4) "Regularly traded" is defined as that phrase is defined in Treas. Reg. Section 1.884-5 (d)(4) (2007), which is adopted and incorporated by reference.

KEY: taxation, franchises, historic preservation, trucking industries

September 17, 2009	9-2-401
Notice of Continuation March 8, 2007	through
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	53B-8a-112
59-1-1301 through	59-1-1309
	59-6-102
	59-7-101
	59-7-102
	59-7-104
	through
	59-7-106
	59-7-108
	59-7-109
	59-7-110
	59-7-112
	59-7-302
	through
	59-7-321
	59-7-402
	59-7-403
	59-7-501
	59-7-502
	59-7-505
	59-7-601
	through
	59-7-614
	59-7-608
	59-7-701
	59-7-703
	59-10-603

R912. Transportation, Motor Carrier, Ports-of-Entry.**R912-6. Ports-of-Entry By-Pass Permit Provisions.****R912-6-1. Purpose.**

This rule establishes procedures that allow the Motor Carrier Division to issue a temporary port-of-entry by-pass permit to accommodate multi-trip, highway transportation needs.

R912-6-2. Definitions.

Except for the following, this rule uses the same definitions as those listed in R909-16:

(1) "Commercial Vehicle" means a motor vehicle, vehicle, trailer, or semi trailer used or maintained for business, compensation, or profit to transport passengers or property on a highway if the commercial vehicle:

(a) has a manufacturer's gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used in the transportation of hazardous materials found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C;

(2) "Intrastate" means transportation movement entirely within the state.

(3) "Multi-Trip" means two or more daily or weekly trips in the proximity of a port-of-entry.

R912-6-3. Port-of-Entry By-Pass Permits.

(1) Pursuant to Substitute Senate Bill 144, Motor Vehicle Ports-of-Entry, enacted during the 2005 General Session of the Legislature, by-pass privileges will be granted to a motor carrier for multiple motor vehicles. Decals will be issued to individual vehicles within a motor carrier's fleet.

(2) By-pass permit privileges expire one year after they are issued.

(3) Motor Carriers shall meet the "Multi-Trip" definition to receive and maintain by-pass privileges. A motor carrier may be excused from this requirement on a case-by-case basis if the carrier does not meet the "Multi-Trip" definition but is able to demonstrate to the Department that denial of a permit will cause a hardship if the vehicle has to be diverted to a port-of-entry. A Motor Carrier may appeal a denial pursuant to R912-6-7.

(4) By-pass privileges may be granted to carriers traversing multiple ports-of-entry within the same route.

(5) Unless otherwise authorized by the Department, Motor Carriers that have by-pass privilege must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, and unit-specific information.

(6) The Department will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R912-6-4. Enrollment Criteria.

A Motor Carrier requesting a port-of-entry by-pass permit from the Department shall have an overall company safety fitness rating of satisfactory standing, as set forth under R909-16.

R912-6-5. Assignment of Provisional Standing.

The Department may issue provisional standing to a Motor Carrier for which there is insufficient data to determine compliance with the Safety Standard or if the Motor Carrier has not received a safety rating in accordance with the Federal Motor Carrier Safety Regulations, Title 49 Part 385.

R912-6-6. Application Process.

(1) Motor Carriers requesting a port-of-entry by-pass permit shall make application to the Motor Carrier Division by contacting the Central Permitting Office at (801) 965-4880.

(2) Motor Carriers are required to submit routing information including point of origin, destination, and routine routes traveled.

(3) Carriers denied by-pass privileges by the Department for reasons other than conditions constituting a satisfactory standing, such as proximity, travel pattern, number of trips, etc., may appeal the Department's decision by providing additional documentation as to why the by-pass privilege should be authorized.

R912-6-7. Steering Committee - Appeal Process.

When an application for a by-pass permit is denied for reasons other than the conditions set forth in R912-6-3, the Motor Carrier may file an appeal. The appeals shall be handled by a steering committee created by the Motor Carrier Division. The steering committee shall have the powers granted to the Deputy Director in R907-1-3 for appeals from other Motor Carrier Division administrative actions. This committee's decision, if adopted by the Director of the Motor Carrier Division, will be considered a final agency order under the Utah Administrative Procedures Act.

R912-6-8. Suspensions and Revocations of Port-of-Entry By-Pass Permit.

The Department may suspend or revoke the Motor Carrier's by-pass permit if the Motor Carrier fails to meet conditions set forth under R909-16-3. If a Motor Carrier is denied by-pass privileges as a result of the assessment of an unsatisfactory standing issued by the Department, the Motor Carrier must appeal that standing assessment pursuant to R909-16-11.

R912-6-9. Audits.

As a condition of receiving a by-pass permit, a Motor Carrier is subject to compliance reviews, safety assessments, and inspections as the Department considers necessary in order to carry out state and federal law, including Utah Code Ann. Section 72-9-301.

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